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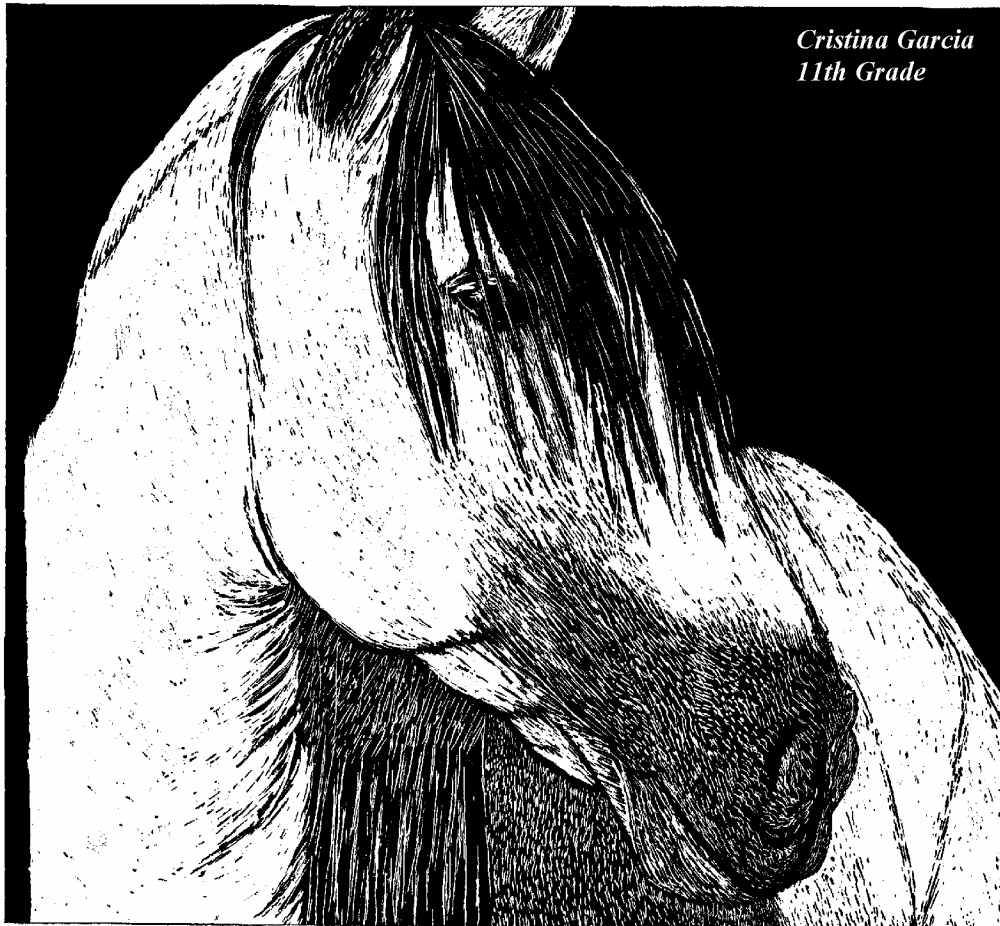
# TEXAS REGISTER

*Volume 31 Number 5*

*February 3, 2006*

*Pages 607-776*

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569  
<http://www.sos.state.tx.us>  
[subadmin@sos.state.tx.us](mailto:subadmin@sos.state.tx.us)

**Secretary of State –**  
Roger Williams

**Director** - Dan Procter

**Staff**

Ada Aulet  
Leti Benavides  
Dana Blanton  
Belinda Bostick  
Kris Hogan  
Roberta Knight  
Jill S. Ledbetter  
Juanita Ledesma  
Diana Muniz

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for January 9, 2006

Appointed as Judge of the 279th Judicial District Court, Jefferson County, for a term until the next General Election and until his successor shall be duly elected and qualified, Rickey N. Williams of Nederland. Mr. Williams is replacing Judge Thomas Mulvaney who is deceased.

Appointed as Judge of the 160th Judicial District Court, Dallas County, for a term until the next General Election and until her successor shall be duly elected and qualified, Nancy A. Thomas of Dallas. Judge Thomas is replacing Judge Joseph M. Cox who resigned.

Appointed to the Credit Union Commission for a term to expire February 15, 2007, Dale E. Kimble of Denton (replacing Gerold Base who resigned).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2007, Robert K. Peters, Ph.D. of Tyler (replacing David Franklin who is deceased).

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, Elizabeth Ames Jones of Austin.

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, Robert Stephen Molina of Dallas.

### Appointments for January 17, 2006

Appointed to the School Land Board for a term to expire August 29, 2007, Todd F. Barth of Houston (Mr. Barth is being reappointed).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2011, Rene Ordoñez of El Paso (replacing Carlos Villa of El Paso whose term expired).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2011, Ray West of Brownwood (replacing Lyle Larson of San Antonio whose term expired).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2011, Lea R. Wright of Amarillo (replacing Bettye (Betsy) Lake of Houston whose term expired).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2009, Paul F. Paine of Fort Worth (replacing George Ceverha of Dallas who resigned).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2009, Alvin W. Jones of College Station (pursuant to HB 3163, 79th Legislature, Regular Session).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2011, Eugene N. Tulich of Spring (pursuant to HB 3163, 79th Legislature, Regular Session).

### Appointments for January 18, 2006

Appointed to the Rio Grande Compact Commission for a term to expire June 9, 2007, Patrick R. Gordon of El Paso (replacing Joe Hanson who resigned).

Appointed to the Texas Forensic Science Commission, pursuant to HB 1068, 79th Legislature, Regular Session, for a term to expire September 1, 2007, Debbie Lynn Benningfield of Hockley.

Appointed to the Texas Forensic Science Commission, pursuant to HB 1068, 79th Legislature, Regular Session, for a term to expire September 1, 2007, Alan L. Levy of Fort Worth.

Designating Debbie Lynn Benningfield as Presiding Officer of the Texas Forensic Science Commission, pursuant to HB 1068, 79th Legislature, Regular Session, for a term at the pleasure of the Governor.

Rick Perry, Governor

TRD-200600280



## Appointments

### Appointments for January 20, 2006

Appointed to the Texas Forensic Science Commission, pursuant to HB 1068, 79th Legislature, Regular Session, for a term to expire September 1, 2007, Samuel E. Bassett of Austin.

Appointed to the Texas Higher Education Coordinating Board, pursuant to SB 287, 78th Legislature, Regular Session, for a term to expire August 31, 2011, Elaine Mendoza of San Antonio.

Appointed to the Texas Higher Education Coordinating Board, pursuant to SB 287, 78th Legislature, Regular Session, for a term to expire August 31, 2011, Joe Bob Hinton of Crawford.

Appointed to the Texas County and District Retirement System, Board of Trustees for a term to expire December 31, 2011, H.C. "Chuck" Cazalas of Corpus Christi (replacing Amador Reyna of Kountz whose term expired).

Appointed to the Texas County and District Retirement System, Board of Trustees for a term to expire December 31, 2011, Gerald "Buddy" Winn of Bryan (replacing Mitchell Liles of Dallas whose term expired).

Appointed to the Texas County and District Retirement System, Board of Trustees for a term to expire December 31, 2011, Lisa A. Hembry of Dallas (replacing Martha Gustavsen of Conroe whose term expired).

Appointed to the Automobile Theft Prevention Authority for a term to expire February 1, 2007, Cindy Ramos-Davidson of El Paso (replacing Ernest Garcia of Austin who resigned).

Appointed to the Automobile Theft Prevention Authority for a term to expire February 1, 2009, Jason Hartgraves of Frisco (replacing Macario Tristan of Carrollton whose term expired).

Appointed to the Automobile Theft Prevention Authority for a term to expire February 1, 2011, Carlos Luis Garcia of Brownsville (Mr. Garcia is being reappointed).

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2009, Nedra J. Foster of Silsbee (replacing William Willson who is deceased).

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2011, Paul P. Kwan of Houston (replacing Daniel Martinez of Lubbock whose term expired).

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2011, Anthony Treviño, Jr. of Laredo (replacing Steve Hofer of Midland whose term expired).

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2011, Douglas William Turner of League City (Mr. Turner is being reappointed).

Rick Perry, Governor

TRD-200600387



## Executive Order

### RP 54

#### *Relating to disaster recovery.*

WHEREAS, Hurricane Katrina, a disaster in sister states, created an emergency disaster and emergency conditions for the people in the State of Texas beginning September 1, 2005; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in South and East Texas; and

WHEREAS, Texas Railroad Commissioner Michael Williams, in his role as leading the state's long-term relief efforts in regards to Hurricanes Katrina and Rita, has requested that I issue an executive order to further aid in the disaster recovery effort in order to continue to address the emergency conditions created by the disasters; and

WHEREAS, I do hereby certify that Hurricanes Katrina and Rita continue to create an emergency disaster and emergency conditions for the people in the State of Texas; and

WHEREAS, pursuant to the Texas Disaster Act of 1975, the governor is responsible for meeting the dangers to the state and people presented by disasters; and

WHEREAS, under Chapter 418 of the Texas Government Code, the governor is expressly authorized to issue executive orders declaring a state of disaster;

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster for purposes of disaster recovery and response and direct that all necessary measures, both public and private as authorized under Section 418.015 of the Texas Government Code, be implemented to meet the disaster.

As provided in Section 418.016 of the Texas Government Code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

FURTHER, I hereby order that all actions taken pursuant to this executive order shall be preauthorized by the State Director of Homeland Security.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until it expires by statute or it is modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 10th day of January, 2006.

Rick Perry, Governor

TRD-200600281



## Proclamation 41-3041

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of Rhode Island performs background checks pursuant to R.I. Gen. Laws §11-47-18, and that those checks meet the requirements of Tex. Gov't Code §411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid permit to carry a handgun from the State of Rhode Island;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid permit to carry a handgun issued by the State of Rhode Island as long as Rhode Island permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted. This recognition does not extend to licenses issued by Rhode Island local municipal authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 13th day of January, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200600282



## Proclamation 41-3042

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and



WHEREAS, the governor has received a statement of finding from the attorney general that the State of New York performs background checks pursuant to N.Y. Penal Law §400.00 et. seq., and that the City of New York performs background checks pursuant to New York City Law §5-01, et. seq., and that both checks meet the requirements of Tex. Gov't Code §411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid permit to carry a handgun from the State of New York or from the City of New York;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid permit to carry a handgun issued by the State of New York or the City of New York as long as the respective permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 13th day of January, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200600283

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#### Proclamation 41-3043

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the county police departments in the State of Hawaii perform background checks pursuant to Hawaii Revised Statutes §134-9, and that those checks meet the requirements of Tex. Gov't Code §411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid license to carry a handgun from the State of Hawaii;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid license to carry a handgun issued by the State of Hawaii as long as Hawaii license holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 13th day of January, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200600284

◆ ◆ ◆

#### Proclamation 41-3044

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that severe drought conditions have caused a disaster in all 254 counties in the State of Texas and is continuing.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of January, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200600388

◆ ◆ ◆

#### Proclamation 41-3045

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas House of Representatives in District No. 106 which consists of part of Dallas County; and

WHEREAS, on November 22, 2005, the Texas Supreme Court issued its ruling in *Neeley v. West Orange-Cove Consolidated Independent School District, et al*, and extended the trial court's injunction against further financing Texas public schools to June 1, 2006; and

WHEREAS, the Legislature must be called into Special Session in order to address the Court's ruling prior to June 1, 2006; and

WHEREAS, the Texas uniform election dates law is intended to serve the interests of voters by allowing consolidation of elections onto a limited number of uniform dates, but the interests of voters of District No. 106 would be better served in this unique case by permitting an earlier election on a non-uniform date in order to be fully represented in the legislative process; and

WHEREAS, Section 203.002 of the Texas Election Code requires that a special election be ordered upon such vacancy and Section 203.004 of the Texas Election Code requires that if the election is to be held as an emergency election, it shall be held on a Tuesday or Saturday occurring on or after the 36th day and before the 50th day after the date the election is ordered; and

WHEREAS, the governor of Texas is granted the discretion under Section 41.0011 of the Election Code to declare an emergency warranting holding a special election before the appropriate uniform election date; and

WHEREAS, Section 3.003 of the Texas Election Code, requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order an emergency special election to be held in District No. 106 on Tuesday, February 28, 2006, for the purpose of electing a State Representative for House District No. 106 to serve the term which began January 11, 2005.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Monday, January 30, 2006.

Early voting by personal appearance shall begin on Monday, February 13, 2006, in accordance with Section 85.001 of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Dallas County; and all appropriate writs will be issued and all proper

proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 106 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 20th day of January, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200600389

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# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinion

**RQ-0429-GA**

**Requestor:**

The Honorable Chris Harris

Chair, Committee on Administration

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Upper Trinity Regional Water District may impose an additional qualification for services as a member of the board of directors (RQ-0429-GA)

**Briefs requested by February 18, 2006**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200600398

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: January 25, 2006

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION SUBCHAPTER G. CERTIFICATION REQUIREMENT FOR CLASSROOM TEACHERS

##### 19 TAC §§230.191, 230.193 - 230.196, 230.198, 230.199

The State Board for Educator Certification (SBEC) adopts on an emergency basis amendments to §§230.191, 230.193 - 230.196, 230.198, and 230.199, relating to certification requirement for classroom teachers. The sections establish provisions relating to preparation required in all programs (§230.191); teacher certificate--secondary (§230.193); teacher certificate--all-level (§230.194); special education certificates (§230.195); vocational agriculture certificates (§230.196); vocational marketing education certificates (§230.198); and endorsements (§230.199). The emergency amendments provide for the SBEC to cease issuing certain ExCET-based certificates on September 1, 2007. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

The amendments are adopted on an emergency basis to take effect immediately pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice. The SBEC finds that emergency amendments are necessary to comply with the requirements of state and federal law. New certificates have been issued in the good faith belief that amendments authorizing the certificates were validly adopted. Absent the emergency amendments, applicants who apply for certificates before regular amendments can be adopted will not be approved because no authority will exist to grant the applications. These applicants will be penalized not for meritorious reasons, but rather solely for the unfortunate timing of their applications. The emergency rule actions are necessary to treat interim applicants the same as those individuals who have previously been issued the new TExES-based examination certificates.

With the exception of technical edits, the emergency amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the emergency amendments accomplish the following.

In §230.191, language is added to subsections (c)(2)(A)(v), (c)(2)(B)(iii), and (f) to allow provisions for the ExCET-based

secondary Grades 6 -12 certificates and all level prekindergarten-Grade 12 certificates to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.193, language is modified in subsection (d) to allow provisions relating to art, dance, journalism, speech communications, and theatre arts to expire on September 1, 2007, and provisions relating to business and other languages to expire on September 1, 2008.

In §230.194, language is added in subsection (c) to allow provisions relating to art, speech communications-theatre arts, and theatre arts to expire on September 1, 2007.

In §230.195, language is added in subsection (c) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.196, language is added in subsection (g) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.198, language is added in subsection (f) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.199, language is added in subsection (c)(4)(D) to allow provisions relating to endorsements for the visually handicapped delivery system area to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

These emergency amendments are adopted in conjunction with emergency amendments to rules in Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs, of this chapter and emergency amendments in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

The amendments are adopted on an emergency basis in accordance with Government Code, §2001.034, and under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The emergency amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

§230.191. *Preparation Required in All Programs.*

(a) - (b) (No change.)

(c) The teacher education program shall include academic specializations and teaching fields in subjects approved to be taught in the public schools of Texas or delivery systems authorized by the State Board of Education [(SBOE)] under the Texas Education Code (TEC) , §28.002(b), for use in the public schools of Texas.

(1) In addition to the teaching certificates specified in this subchapter and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), educator preparation entities operating as alternative certification programs under TEC, [Texas Education Code (TEC)] §21.049, relating to alternative certification, may recommend candidates for certification in the following areas: prekindergarten-Grade 12 [Grades prekindergarten-12] English as a second language [(ESL);] and prekindergarten-Grade 12 [Grades prekindergarten-12] generic special education. The provisions of this paragraph expire on September 1, 2004.

(2) For the teacher certificates, each academic specialization, teaching field, and delivery system shall comply with one or more of the options in this paragraph. In accordance with the TEC, [Texas Education Code (TEC)] §21.050(b), additional semester hours in education are permissible for certification in bilingual education, English as a second language, early childhood education, and special education. For all other certificates based on college-approved teacher education programs, reading shall be included in the approved program. Reading instruction shall be developmental and corrective and include study relating to the phonetic structure of the English language; knowledge of reading instruction such as language-based, phonics-based, and meaning-based instruction; demonstration and application of reading theories; and identification of and teaching strategies and resources for dyslexia and other reading disorders. Reading courses that fulfill these requirements may be offered beyond the 18 semester hours of professional development courses.

(A) The options for teacher certificate--secondary include the following.

(i) Option I (Grades 6-12) requires one 36-semester-hour (including 21 semester hours of upper-division courses) teaching field, with an additional 12 semester hours in a directly supporting field(s).

(ii) Option II (Grades 6-12) requires two 24-semester-hour (including 12 semester hours of upper-division courses in each) teaching fields, delivery systems, or a combination of a teaching field and a delivery system.

(iii) Option III (Grades 6-12) requires one 48-semester-hour (including 24 semester hours of upper-division courses) broad teaching field.

(iv) Option IV (Grades 6-12) requires one 48-semester-hour (including 24 semester hours of upper-division courses, 12 of which are in a single area) composite teaching field. A minimum of six semester hours shall be required in each area.

(v) The provisions of this subparagraph expire on September 1, 2007.

(B) The options for teacher certificate--all-level [~~certificate-all-level~~] include the following.

(i) Option I (prekindergarten-Grade 12) requires one 48-semester-hour (including 24 semester hours of upper-division courses) academic specialization, which includes six semester hours designed for elementary level and six semester hours designed for secondary level.

(ii) Option II (prekindergarten-Grade 12) requires one 36-semester-hour (including 18 semester hours of upper-division

courses) academic specialization, which includes six semester hours designed for elementary level and six semester hours designed for secondary level. Option II is only available for the physical education academic specialization.

(iii) The provisions of [~~clause (ii) of~~] this subparagraph expire on September 1, 2007 [2005].

(d) The professional development sequence for the initial teacher certificate shall consist of 18 semester hours of upper-division courses. The following [~~three~~] components must be included.

(1) Core requirements common to all grade level options include studies of:

(A) teaching-learning processes, including measurement and evaluation of student achievement;

(B) human growth and development;

(C) knowledge and skills concerning the unique needs of special learners, such as:

(i) multicultural education: the impact of cultural, ethnic, language, and social differences upon instructional processes;

(ii) the characteristics, assessment, least restrictive alternatives, and admission, review, and dismissal processes for students requiring individualized or specialized education programs; and

(iii) the characteristics, identification, and needs of gifted and talented students;

(D) legal and ethical aspects of teaching to include the recognition of and response to signs of abuse and neglect in children;

(E) structure, organization, and management of the American school system, with emphasis upon the state and local structure in Texas; and

(F) educational computing, media, and other technologies.

(2) Methodology requirements specifically designed for the grade level option selected shall include studies of the following:

(A) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;

(B) curriculum organization, planning, and evaluation;

(C) basic principles and procedures of classroom management with emphasis on classroom discipline, using group and individual processes as well as different techniques and procedures adapted to the personality of the teacher; and

(D) the scope and sequence of the essential knowledge and skills for all subjects required in the elementary course of study that are not included in the academic specializations when elementary options are selected.

(e) The professional development sequence for the teacher certificate--all-level shall include a minimum of three semester hours designed for the elementary level and three semester hours designed for the secondary level.

(f) The provisions of subsections (d) and (e) of this section expire on September 1, 2007.

§230.193. *Teacher Certificate--Secondary.*

(a) - (c) (No change.)

(d) The provisions of this section expire on September 1, 2005 , with the exception of teaching fields in Art, [~~Business;~~] Dance, Journalism, [~~Other Languages;~~] Speech Communications, and Theatre Arts

, which expire on September 1, 2007, and the teaching fields in Business and Other Languages, which expire on September 1, 2008.

**§230.194. Teacher Certificate--All-Level.**

(a) The teacher certificate--all-level shall be based upon completion of a teacher education program as described in §230.191 of this title (relating to Preparation Required in All Programs). Areas of academic specialization for the teacher certificate--all-level shall be:

- (1) art;
- (2) music;
- (3) physical education;
- (4) speech communications-theatre arts; and
- (5) theatre arts.

(b) The provisions in paragraphs (2) and (3) of this section expire on September 1, 2005.

(c) The provisions of paragraphs (1), (4), and (5) of this section expire on September 1, 2007.

**§230.195. Special Education Certificates.**

(a) The special education certificates shall be based upon completion of a teacher education program as described in §230.191(a), (b), and (c) of this title (relating to Preparation Required in All Programs). In accordance with the Texas Education Code [(TEC)], §21.050(b), additional semester hours in education are permissible for certification in special education. Hearing impaired specialization shall prepare the individual to teach prekindergarten through Grade [grade] 12 in programs designed to serve the hearing impaired and shall require 36 semester hours in courses specifically designed for teaching the deaf and severely hard of hearing, including:

- (1) survey of special education;
- (2) foundations of education for the deaf (history of education of the deaf, psychology of deafness, the state curriculum for the deaf, and the legal aspects of education for the deaf);
- (3) audiology (auditory training and testing and speech reading);
- (4) speech for the deaf;
- (5) language for the deaf;
- (6) manual communication (finger spelling, signed English, and American Sign Language); and
- (7) teaching reading to the deaf.

(b) The professional development sequence for special education certificates shall consist of 18 semester hours of upper-division courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and related disorders and other reading disorders. The following components must be included.

(1) Core requirements common to all grade levels shall include §230.191(d)(e)(1) of this title (relating to Preparation Required in All Programs).

(2) Methodology requirements specifically designed for both the elementary and secondary grade levels shall include §230.191(d)(e)(2) of this title.

(c) The provisions of this section expire on September 1, 2007.

**§230.196. Vocational Agriculture Certificates.**

(a) The program shall include at least one of the following specializations:

- (1) production agriculture; or
- (2) ornamental horticulture.

(b) The specialization in production agriculture shall consist of 48 semester hours (24 semester hours of upper-division courses) of technical agriculture as follows:

- (1) agricultural economics--three semester hours;
- (2) animal science--nine semester hours;
- (3) soil and plant science--nine semester hours;
- (4) agricultural engineering--nine semester hours; and
- (5) scientific agriculture electives--18 semester hours.

(c) The specialization in ornamental horticulture shall consist of 48 semester hours (24 semester hours of upper-division courses) of technical agriculture. The program shall include the following areas:

- (1) agricultural economics;
- (2) genetics (plant reproduction);
- (3) greenhouse and nursery management;
- (4) plant nutrition;
- (5) plant pathology;
- (6) plant physiology;
- (7) plant and soil science; and
- (8) taxonomy of flowering plants.

(d) The professional development sequence shall consist of 18 semester hours of upper-division courses. No more than nine semester hours of the professional development sequence may be completed in vocational agriculture education courses. Reading, which may be offered beyond the 18 semester hours of professional development, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(d)(e)(1) of this title (relating to Preparation Required in All Programs).

(2) Methodology requirements shall include, but need not be limited to:

- (A) adult and young farmer education;
- (B) youth leadership development and activities;
- (C) supervision of occupational experience programs;
- (D) history, principles, and foundations of vocational education in agriculture;
- (E) advisory councils for vocational agriculture;
- (F) special needs of students in vocational agriculture;
- (G) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;
- (H) curriculum organization, planning, and evaluation; and
- (I) basic principles and procedures of classroom management with emphasis on classroom discipline, using group processes

as well as different techniques and procedures adapted to the personality of the teacher.

(e) Additional requirements for assignment to specialized programs in vocational agriculture are described in this chapter.

(f) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field with the amount in each field to be determined by the preparation program.

(g) The provisions of this section expire on September 1, 2007.  
§230.198. *Vocational Marketing Education Certificates.*

(a) The vocational marketing education certificate shall be based upon completion of a teacher education program as described in §230.191 of this title (relating to Preparation Required in All Programs).

(b) Academic preparation and work experience required for the vocational marketing education certificate shall consist of:

(1) 48 semester hours (24 semester hours upper-division courses) that include the following:

- (A) introduction to business;
- (B) business communication;
- (C) business law;
- (D) elementary accounting;
- (E) statistics;
- (F) retailing;
- (G) marketing;
- (H) principles of management;
- (I) principles of advertising; and
- (J) salesmanship; and

(2) two years of wage-earning experience approved by the teacher education program in one or more of the marketing occupations or one year of wage-earning experience in addition to 1,000 clock hours of employment experience supervised by the approved teacher education program.

(c) The professional development sequence shall require 18 semester hours of upper-division courses. No more than nine semester hours of the professional development sequence may be completed in vocational marketing education courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(d)(1)(A) of this title.

(2) Methodology requirements shall include §230.191(d)(2)(A) - (C) of this title.

(d) Additional requirements for assignment to specialized programs in vocational marketing education are described in this chapter.

(e) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field with the amount in each field to be determined by the preparation program [institution].

(f) The provisions of this section expire on September 1, 2007.  
§230.199. *Endorsements.*

(a) - (b) (No change.)

(c) Program requirements for endorsement in delivery system areas.

(1) - (3) (No change.)

(4) Visually handicapped.

(A) Certificate requirement. The visually handicapped endorsement may be added only to special education certificates or to elementary or secondary teacher certificates.

(B) Professional development. The professional development sequence for the visually handicapped endorsement shall consist of [2] 21 semester hours directly related to teaching the visually handicapped that must include, but need not be limited to:

(i) physiological, psychological, and social factors of blindness;

(ii) literary braille (grade II);

(iii) special braille notations (including nemeth code, braille music, scientific notation, formal and foreign language);

(iv) media, materials, and adaptations;

(v) methods of instruction (including low vision, orientation and mobility, vocational and career exploration, and multihandicapped [multihandicapped]);

(vi) assessment and programming;

(vii) intervention and parent training; and

(viii) survey of exceptional children.

(C) ExCET requirement: Visually Handicapped.

(D) The provisions of this paragraph expire on September 1, 2007.

(5) (No change.)

(d) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600290

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

Effective Date: January 19, 2006

Expiration Date: May 18, 2006

For further information, please call: (512) 475-1497



## SUBCHAPTER P. REQUIREMENTS FOR STANDARD CERTIFICATES AND SPECIALIZED ASSIGNMENTS OR PROGRAMS 19 TAC §§230.482 - 230.484

The State Board for Educator Certification (SBEC) adopts on an emergency basis amendments to §§230.482 - 230.484, relating to requirements for standard certificates and specialized

assignments or programs. The sections establish provisions relating to specific requirements for standard certificates and endorsements (§230.482); specific requirements for standard career and technology certificates based on experience and preparation (§230.483); and eligibility requirements for specialized assignments or programs (§230.484). The emergency amendments provide for the SBEC to cease issuing certain EX-CET-based certificates on September 1, 2007. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

The amendments are adopted on an emergency basis to take effect immediately pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice. The SBEC finds that emergency amendments are necessary to comply with the requirements of state and federal law. New certificates have been issued in the good faith belief that amendments authorizing the certificates were validly adopted. Absent the emergency amendments, applicants who apply for certificates before regular amendments can be adopted will not be approved because no authority will exist to grant the applications. These applicants will be penalized not for meritorious reasons, but rather solely for the unfortunate timing of their applications. The emergency rule actions are necessary to treat interim applicants the same as those individuals who have previously been issued the new TExES-based examination certificates.

With the exception of technical edits, the emergency amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the emergency amendments accomplish the following.

In §230.482, language is added in subsection (e) to allow provisions to expire on September 1, 2007, that relate to standard classroom teacher certificate--all level; standard special education certificates; standard agricultural science and standard horticultural science certificates; standard marketing education certificates; and endorsements. Additional non-substantive, technical edits are also made to this section.

In §230.483, language is added in subsection (b)(4) to allow provisions relating to the standard marketing education certificate to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.484, language is added in subsection (d)(2)(F) to allow provisions relating to agricultural science and technology to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

These emergency amendments are adopted in conjunction with emergency amendments to rules in Subchapter G, Certification Requirements for Classroom Teachers, of this chapter and emergency amendments in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

The amendments are adopted on an emergency basis in accordance with Government Code, §2001.034, and under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2),

which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The emergency amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

*§230.482. Specific Requirements for Standard Certificates and Endorsements.*

(a) The following certificates require completion of an approved educator preparation program offered under Subchapter G of this chapter (relating to Certification Requirement for Classroom Teachers [Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements]):

- (1) standard classroom teacher certificate--secondary;
- (2) standard classroom teacher certificate--all level;
- (3) standard special education certificates;
- (4) standard agricultural science and standard horticultural science certificates; and
- (5) standard home economics certificate.

(b) The standard marketing education certificate requires one of the following:

(1) completion of an approved program offered under §230.198 of this title (relating to Vocational Marketing Education Certificates); or

(2) completion of requirements in §230.483(b) of this title (relating to Specific Requirements for Standard Career and Technology ~~[Vocational]~~ Certificates Based on Experience and Preparation ~~[in Skill Areas]~~).

(c) All endorsements require completion of an approved program offered under §230.199 of this title (relating to Endorsements) or completion of requirements under provisions of §230.437 of this title (relating to Issuance of Certificates Based on Examination).

(d) The provisions of subsection (a)(5) ~~[(a), paragraph (5)]~~ of this section shall expire on September 1, 2005.

(e) The provisions of subsection (a)(2), (3), and (4), and subsections (b) and (c) of this section shall expire on September 1, 2007.

*§230.483. Specific Requirements for Standard Career and Technology Certificates Based on Experience and Preparation.*

- (a) (No change.)
- (b) Standard marketing education certificate.

(1) The standard marketing education certificate may be based on the program requirements specified in Subchapter G of this chapter ~~[title]~~ (relating to Certification Requirement for Classroom Teachers [Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements]) or preparation and experience in the skill area.

(2) Certification based on preparation and experience in the skill area shall require:

- (A) a bachelor's degree from an accredited institution with six semester hours of courses in retailing and marketing;
- (B) completion of SBEC requirements in the United States and Texas Constitutions;
- (C) two years of wage-earning experience approved by the employing superintendent or certification officer of a college or



university approved to prepare teachers for the vocational certificate in one or more of the marketing occupations;

(D) 12 semester hours of professional development from an institution with an approved program in marketing education that includes the following:

- (i) history and philosophy of vocational education;
- (ii) methods of teaching marketing and distributive education;
- (iii) organizing and managing marketing education programs; and
- (iv) techniques for coordinating marketing education programs; and

(E) two creditable years, as defined in Subchapter Y of this chapter, of teaching experience on emergency permits in the area of marketing education.

(3) The standard marketing education certificate shall establish eligibility to teach cooperative training, coordinated vocational-academic education, pre-employment [preemployment] laboratory, and vocational education for the handicapped in marketing and distributive education.

(4) The provisions of this subsection expire on September 1, 2007.

(c) - (h) (No change.)

§230.484. *Eligibility Requirements for Specialized Assignments or Programs.*

(a) - (c) (No change.)

(d) Requirements for eligibility to teach in specialized assignments or programs shall be as follows.

(1) (No change.)

(2) Agricultural science and technology.

(A) Horticulture. Eligibility to teach horticulture shall require a valid standard certificate for horticultural sciences. No additional course or workshop shall be required for assignment to pre-employment [preemployment] laboratory education (PELE) or vocational education for the handicapped programs (VEH) in horticulture.

(B) Cooperative training programs. Eligibility to teach cooperative training programs shall require a valid provisional certificate for agricultural science and one of the following:

(i) a workshop sponsored by the Texas Education Agency (TEA) that is designed to provide specialized training for teachers assigned to implement and conduct cooperative training programs; or

(ii) three semester hours of agriculture education in the area of the special agricultural science and technology program.

(C) Pre-employment [Preemployment] laboratory education and VEH. Eligibility to teach PELE or VEH shall require a valid Texas certificate for agricultural science and one of the following:

(i) a workshop sponsored by the TEA that is designed to provide specialized training for teachers assigned to teach pre-employment [preemployment]; or

(ii) six semester hours of technical agriculture in the area of the special agricultural science and technology program.

(D) Courses and workshops. Agriculture education course work and workshops sponsored by the TEA shall be conducted

by institutions approved for the preparation of agricultural science and technology teachers.

(E) Teachers assigned to Career Investigation and Career Connections must hold a teacher certification in any of the Career and Technology (CATE) program areas, and shall participate in a TEA-approved [Texas Education Agency (TEA) approved] two hour workshop for beginning Career Investigation / Career Connections teachers prior to teaching the course. Teachers must also attend and participate in a TEA-sponsored [TEA sponsored] CATE Professional Development Conference prior to assignment.

(F) The provisions of this paragraph expire on September 1, 2007.

(3) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600291

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

Effective Date: January 19, 2006

Expiration Date: May 18, 2006

For further information, please call: (512) 475-1497



## CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

### SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

#### 19 TAC §232.850, §232.851

The State Board for Educator Certification (SBEC) adopts on an emergency basis amendments to §232.850 and §232.851, relating to certificate renewal and continuing professional education (CPE) requirements. The sections establish the number and content of required CPE hours (§232.850) and specify the CPE requirements by classes of certificates (§232.851). The emergency amendments establish a prorated schedule of CPE hours that may be used by educators seeking to renew multiple classes of standard certificates issued with different effective dates during the same five-year renewal cycle. The emergency amendments also add CPE requirements for holders of school librarian certificates and holders of standard certificates for supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers. Holders of certain newly added certificates are exempt from the CPE hours during the first five-year renewal period.

The amendments are adopted on an emergency basis to take effect immediately pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice. The SBEC finds that emergency amendments are necessary to comply with the requirements of state and federal law. New certi-

cates have been issued and CPE exemptions have been approved by staff in the good faith belief that amendments authorizing the certificates and exemptions were validly adopted. Absent the emergency amendments, applicants who apply for certificates and exemptions before regular amendments can be adopted will not be approved because no authority will exist to grant the applications. These applicants will be penalized not for meritorious reasons, but rather solely for the unfortunate timing of their applications. The emergency rule actions will ensure that interim applicants are treated the same as those individuals who have previously been issued the new certificates or granted exemptions from CPE requirements.

With the exception of technical edits, the emergency amendments reflect the separate rule actions adopted by the SBEC in 2004 and 2005. Specifically, the emergency amendments accomplish the following:

(1) change language in §232.850(a) to indicate that the appropriate number of CPE hours must be completed during each five-year renewal period for each class of certification held;

(2) add language in §232.850(e) to allow an educator who is issued an additional class of certificate after the beginning of the five-year renewal cycle to satisfy the renewal requirement by completing a minimum of one-fifth of the required CPE hours for each full year that the additional class of certificate is valid;

(3) add language in §232.851(d) to require school librarians to complete the same 200 CPE hour requirement as learning resources specialists;

(4) add language to §232.851(l) to clarify that the holder of more than one class of standard certification would be required to complete no more than 200 CPE hours for renewal of all certificates held unless otherwise specified;

(5) add language to §232.851(m) to require 200 CPE hours every five years for renewal of standard certificates for supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers; and

(6) add language to §232.851(n) to exempt supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers from the CPE hours during the first five-year renewal period of the standard certificate.

The proposed amendment also re-titles the chapter and subchapter, as follows. The title of 19 TAC Chapter 232 changes to "General Certification Provisions" from "General Requirements Applicable to All Certificates Issued." Subchapter "R" is changed to "B" to allow for greater use of this chapter.

The amendments are adopted on an emergency basis in accordance with Government Code, §2001.034, and under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(9), which requires the SBEC to provide for continuing education requirements.

The emergency amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (9).

*§232.850. Number and Content of Required Continuing Professional Education Hours.*

(a) Standard certificate. The appropriate number of [At least 150] clock hours of continuing professional education (CPE), as specified in §232.851 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period. Educators should complete a minimum of 20 clock hours of CPE each year of the renewal period. An educator renewing multiple certificates should complete a minimum of five CPE clock hours each year in the content area knowledge and skills for each certificate being renewed.

(b) - (d) (No change.)

(e) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.851 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE hours. Educators must complete a minimum of one-fifth of the additional CPE hours for each full calendar year that the additional class of certificate is valid.

*§232.851. Number of Required Continuing Professional Education Hours by Classes of Certificates.*

(a) Holders of the Standard Superintendent Certificate must complete 200 clock hours of continuing professional education every five years. Specific requirements are contained in §242.30 of this title (relating to Requirements for Continuing Education and the Renewal of the Standard Superintendent Certificate).

(b) Holders of the Standard Principal Certificate must complete 200 clock hours of continuing professional education every five years. Specific requirements are contained in §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(c) Holders of the Standard School Counselor Certificate must complete 200 clock hours of continuing professional education every five years.

(d) Holders of the Standard School Librarian Certificate and Learning Resources Specialist Certificate must complete 200 clock hours of continuing professional education every five years.

(e) Holders of the Standard Educational Diagnostician Certificate must complete 200 clock hours of continuing professional education every five years.

(f) Holders of the Standard Reading Specialist Certificate must complete 200 clock hours of continuing professional education every five years.

(g) Holders of the Standard Master Teacher Certificate must complete 200 clock hours of continuing professional education every five years.

(h) Holders of the Standard Classroom Teacher Certificate must complete 150 clock hours of continuing professional education every five years. Specific requirements are contained in §232.850 of this title (relating to Number and Content of Required Continuing Professional Education Hours).

(i) Holders of the Standard Educational Aide Certificate are exempt from the provisions of §232.850 of this title [~~(relating to Number and Content of Required Continuing Professional Education Hours)~~].

(j) Holders of Professional Certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.810

of this title [chapter] (relating to Voluntary Renewal of Current Texas Educators) must complete 200 clock hours of continuing professional education every five years.

(k) Holders of Provisional Certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.810 of this title [chapter] must complete 150 clock hours of continuing professional education every five years.

(l) An educator must complete a total of 150 or 200 clock hours of continuing professional education during each five-year renewal period unless otherwise specified in this title.

(m) Holders of a Standard Certificate in the following areas must complete 200 clock hours of continuing professional education every five years:

- (1) Supervisor;
- (2) Special Education Supervisor;
- (3) Vocational Supervisor;
- (4) Visiting Teacher; and
- (5) Special Education Visiting Teacher.

(n) Holders of a standard certificate listed in subsection (m) of this section are exempt from the continuing professional education hours stipulated in subsection (m) during the first five-year renewal period of the standard certificate. During subsequent renewal periods, the holder of such standard certificates must satisfy the most current requirements for renewal.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600289

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

Effective Date: January 19, 2006

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For further information, please call: (512) 475-1497



## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §§233.3, 233.8, 233.10, 233.12, 233.14, 233.15

The State Board for Educator Certification (SBEC) adopts on an emergency basis amendments to §§233.3, 233.8, 233.10, and 233.12 and new §233.14 and §233.15, relating to categories of classroom teaching certificates. The existing sections address certificates for English language arts and reading; social studies (§233.3); special education (§233.8); fine arts (§233.10); and career and technology education, not requiring experience and preparation in skills areas (§233.12). The new sections address certificates for career and technology education, requiring experience and preparation in a skill area (§233.14) and languages other than English (§233.15). The emergency amendments provide for the SBEC to issue new categories of classroom teaching certificates beginning on September 1, 2005. The superseded certificates will remain valid and SBEC will not require educators

who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

The amendments are adopted on an emergency basis to take effect immediately pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice. The SBEC finds that emergency amendments are necessary to comply with the requirements of state and federal law. New certificates have been issued in the good faith belief that amendments authorizing the certificates were validly adopted. Absent the emergency amendments, applicants who apply for certificates before regular amendments can be adopted will not be approved because no authority will exist to grant the applications. These applicants will be penalized not for meritorious reasons, but rather solely for the unfortunate timing of their applications. The emergency rule actions are necessary to treat interim applicants the same as those individuals who have previously been issued the new TExES- based examination certificates.

With the exception of technical edits, the emergency amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the emergency amendments add the following certificates beginning September 1, 2005.

In §233.3, language is added in subsection (g) to create a certificate for journalism which allows the holder to teach all journalism courses in Grades 8-12. Language is also added in subsection (h) to create a certificate for speech which allows the holder to teach all speech courses in Grades 8-12.

In §233.8, language is added in subsection (c) to create a certificate for a teacher of the deaf and hard of hearing which allows the holder to teach at any level in a special education instructional program serving eligible students, unless otherwise specified. Language is also added in subsection (d) to create a supplemental certificate for a teacher of students with visual impairments which allows the holder to teach at any level in a special education instructional program serving eligible students, unless otherwise specified.

In §233.10, the unnumbered paragraph is now identified as subsection (a) since new subsections are added to the section. Additional non-substantive, technical edits are made in subsection (a). Language is added in subsection (b) to create a certificate for art which allows the holder to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12. Language is added in subsection (c) to create a certificate for theatre which allows the holder to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12. Language is added in subsection (d) to create a certificate for dance which allows the holder to teach all dance courses in Grades 8-12.

In §233.12, language is added in subsection (f) to create a certificate for agricultural science and technology that allows the holder to teach all agricultural science and technology courses in Grades 6-12, including Introductory Horticulture and Introductory Agricultural Mechanics.

New §233.14 establishes requirements for individuals seeking a TExES-based career and technology education certificate that requires experience and preparation in a skill area. The new section also creates a certificate for marketing education, requiring two years of specific wage-earning experience, which allows the holder to teach all marketing education courses in Grades 8-12.

New §233.15 creates a certificate for American Sign Language which allows the holder to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

These emergency amendments are adopted in conjunction with emergency amendments to rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter G, Certification Requirements for Classroom Teachers, and emergency amendments in Chapter 230, Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs.

The amendments are adopted on an emergency basis in accordance with Government Code, §2001.034, and under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid; and §21.041(b)(6), which requires the SBEC to provide for special or restricted certification of educators, including certification of instructors of American Sign Language.

The emergency amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), (3), and (6).

*§233.3. English Language Arts and Reading; Social Studies.*

(a) - (f) (No change.)

(g) Journalism: Grades 8-12. The Journalism: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Journalism: 8-12 certificate is eligible to teach all Journalism courses in Grades 8-12.

(h) Speech: Grades 8-12. The Speech: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Speech: 8-12 certificate is eligible to teach all Speech courses in Grades 8-12.

*§233.8. Special Education.*

(a) - (b) (No change.)

(c) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12. The Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

(d) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12. The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

*§233.10. Fine Arts.*

(a) Music: Early Childhood-Grade 12. The Music: Early Childhood [EC] -Grade 12 certificate may be issued no earlier than September 1, 2004. The holder of the Music: Early Childhood [EC] -Grade 12 certificate is eligible to [may] teach music in a prekindergarten [pre-kindergarten] program, in kindergarten, and in Grades [grades] 1-12.

(b) Art: Early Childhood-Grade 12. The Art: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Art: Early Childhood-Grade 12 certificate is eligible to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Theatre: Early Childhood-Grade 12. The Theatre: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Theatre: Early Childhood-Grade 12 certificate is eligible to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12.

(d) Dance: Grades 8-12. The Dance: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Dance: Grades 8-12 certificate is eligible to teach all dance courses in Grades 8-12.

*§233.12. Career and Technology Education. (Certificates not requiring experience and preparation in skills areas.)*

(a) - (e) (No change.)

(f) Agricultural Science and Technology: Grades 6-12. The Agricultural Science and Technology: Grades 6-12 certificate may be issued no earlier than September 1, 2005. The holder of the Agricultural Science and Technology: Grades 6-12 certificate is eligible to teach all Agricultural Science and Technology courses in Grades 6-12, including Introductory Horticulture and Introductory Agricultural Mechanics.

*§233.14. Career and Technology Education. (Certificates requiring experience and preparation in a skill area.)*

(a) All individuals seeking a career and technology education certificate specified in this section must have prior work experience and preparation in a skill area approved by an educator preparation program approved to prepare teachers for the career and technology certificate sought in accordance with the provisions of §230.483(g) of this title (relating to Specific Requirements for Standard Career and Technology Certificates Based on Experience and Preparation).

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Marketing Education: Grades 8-12 certificate is eligible to teach all Marketing Education courses in Grades 8-12. The Marketing Education: Grades 8-12 certificate requires two years of wage-earning experience approved by the educator preparation program in one or more of the marketing occupations.

*§233.15. Languages Other Than English.*

American Sign Language (ASL): Early Childhood-Grade 12. The American Sign Language (ASL): Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the American Sign Language (ASL): Early Childhood-Grade 12 certificate is eligible to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600292

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

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Expiration Date: May 18, 2006

For further information, please call: (512) 475-1497



## 19 TAC §233.4

The State Board for Educator Certification (SBEC) adopts on an emergency basis an amendment to §233.4, relating to categories of classroom teaching certificates. The section addresses certificates for mathematics and science. The emergency amendment provides for the SBEC to issue new categories of classroom teaching certificates beginning on September 1, 2005, for mathematics/physical science/engineering and chemistry.

The amendment is adopted on an emergency basis to take effect immediately pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice. The SBEC finds that an emergency amendment is necessary to comply with the requirements of state and federal law. New certificates have been issued in the good faith belief that the amendment authorizing the certificates was validly adopted. Absent the emergency amendment, applicants who apply for certificates before the regular amendment can be adopted will not be approved because no authority will exist to grant the applications. These applicants will be penalized not for meritorious reasons, but rather solely for the unfortunate timing of their applications. The emergency rule action is necessary to treat interim applicants the same as those individuals who have previously been issued the new TExES-based examination certificates.

With the exception of technical edits, the emergency amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the emergency amendment adds the following certificates beginning September 1, 2005.

Non-substantive, technical edits are made in subsections (g) and (h).

In subsection (i), language is added to create a certificate for mathematics/physical science/engineering which allows the holder to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, Integrated Physics and Chemistry and all of the technology education courses in Grades 8-12, and Scientific Research and Design in Grades 9-12. The new subsection specifies required training for beginning principles of technology teachers.

In subsection (j), language is added to create a certificate for chemistry which allows the holder to teach science in Grade 8 and all chemistry courses in Grades 9-12.

The amendment is adopted on an emergency basis in accordance with Government Code, §2001.034, and under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires

the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The emergency amendment implements Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

### §233.4. *Mathematics; Science.*

(a) - (f) (No change.)

(g) Physical Science: Grades 8-12. The Physical Science: 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: 8-12 certificate is eligible to [may] teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, Principles of Technology I and II, and Scientific Research and Design, in Grades 9 through 12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency approved workshop for beginning principles of technology teachers prior to teaching the course.

(h) Physics/Mathematics: Grades 8-12. The Physics/Mathematics: 8-12 certificate may be issued no earlier than [that] September 1, 2004. The holder of the Physics/Mathematics: 8-12 certificate is eligible to [may] teach mathematics in Grade [grade] 8 and all mathematics courses in Grades [grades] 9-12. The holder may also teach science in Grade [grade] 8, and all physics courses, Principles of Technology I and II, and Scientific Research and Design in Grades [grades] 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency approved workshop for beginning principles of technology teachers prior to teaching the course.

(i) Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, Integrated Physics and Chemistry, and all of the Technology Education courses, including Principles of Technology I and II, in Grades 8-12, and Scientific Research and Design in Grades 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency-approved workshop for beginning principles of technology teachers prior to teaching the course.

(j) Chemistry: Grades 8-12. The Chemistry: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600293

Patricia Hayes  
Associate Commissioner, Educator Quality and P-16 Initiatives  
State Board for Educator Certification  
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Expiration Date: May 18, 2006  
For further information, please call: (512) 475-1497

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**TITLE 22. EXAMINING BOARDS**

**PART 5. STATE BOARD OF DENTAL EXAMINERS**

**CHAPTER 101. DENTAL LICENSURE**

**22 TAC §101.6**

The State Board of Dental Examiners is renewing the effectiveness of the emergency adoption of new §101.6, for a 60-day period. The text of the new section was originally published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6146).

Filed with the Office of the Secretary of State on January 18, 2006.

TRD-200600276  
Dr. Jim Zukowski, Ed.D.  
Executive Director  
State Board of Dental Examiners  
Original Effective Date: September 12, 2005  
Expiration Date: March 10, 2006  
For further information, please call: (512) 475-0972

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**CHAPTER 103. DENTAL HYGIENE LICENSURE**

**22 TAC §103.6**

The State Board of Dental Examiners is renewing the effectiveness of the emergency adoption of new §103.6, for a 60-day period. The text of the new section was originally published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6147).

Filed with the Office of the Secretary of State on January 18, 2006.

TRD-200600275  
Dr. Jim Zukowski, Ed.D.  
Executive Director  
State Board of Dental Examiners  
Original Effective Date: September 12, 2005  
Expiration Date: March 10, 2006  
For further information, please call: (512) 475-0972

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

##### SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

###### 16 TAC §402.600

The Texas Lottery Commission proposes amendments to 16 TAC §402.600, relating to Bingo Reports. The proposed amendments include less restrictive language with regard to the payment of prize fees or rental tax due, and add reporting requirements for certain licensees.

Kathy Pyka, Controller, has determined for each year of the first five years the proposed amendments are in effect there will be no fiscal implications to state or local government. There will be no impact on small or micro businesses, individuals, or local or state employment as a result of implementing the amended section.

William L. Atkins, Charitable Bingo Operations Director, Charitable Bingo Operations Division, has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of the proposed amendments is less stringent requirements for certain licensees with regard to payment of prize fees or tax due, and the addition of reporting requirements for certain licensees.

Written comments on the proposed amendments may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, by facsimile, or via the agency's website online public comment form. The Commission will hold a public hearing on this proposal at 11:00 a.m. on February 8, 2006, at 611 E. 6th Street, Austin, Texas. Comments must be received within 30 days after publication of the proposed amendments in the *Texas Register* in order to be considered.

The amendments are proposed under Texas Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Texas Occupations Code, Chapter 2001.

§402.600. *Bingo Reports.*

(a) - (d) (No change.)

(e) Quarterly report for information relating to a manufacturer or distributor license.

(1) - (3) (No change.)

(4) The Commission will deny a renewal application or revoke a license of a manufacturer or distributor where the licensee has failed to timely file with the Commission the required reports three times within four consecutive quarters.

(f) (No change.)

(g) Quarterly report for information relating to a system service provider license.

(1) - (3) (No change.)

(4) The Commission will deny a renewal application or revoke a license of a system service provider where the licensee has failed to timely file with the Commission the required reports three times within four consecutive quarters.

(h) - (k) (No change.)

(l) The Commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee or rental tax due three times within four consecutive quarters and a final jeopardy determination has been made by the commission for three of the four consecutive quarters in accordance with Texas Government Code §2001.510 and §2001.511 [a 12 month period].

(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2006.

TRD-200600270

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 344-5113



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 101. ASSESSMENT

## SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING ALTERNATIVE EXIT-LEVEL ASSESSMENTS

### 19 TAC §§101.4001, 101.4003, 101.4005

The Texas Education Agency (TEA) proposes new §§101.4001, 101.4003, and 101.4005, concerning alternative exit-level assessments. The proposed new sections would implement the requirements of the Texas Education Code (TEC), §39.025(d)-(e), regarding exit-level performance required for a student to receive a high school diploma. The proposed rule action would allow eligible students to substitute an approved alternative exit-level assessment for the Texas Assessment of Knowledge and Skills (TAKS) exit-level test for the same subject area.

The 79th Texas Legislature, 2005, passed House Bill 25, relating to admission to and transition assistance within the public school system for school-age dependents of military personnel and other students. House Bill 25 amended TEC, §39.025, to require the commissioner of education by rule to adopt one or more alternative nationally recognized norm-referenced assessment instruments to administer to a student to qualify for a high school diploma. This legislation also requires the commissioner of education to establish a required performance level for any such assessment instrument that is at least as rigorous as the performance level for the TAKS test for the same subject area. An eligible student will be exempt from the exit-level TAKS assessments in each subject area in which the student has met the passing standard established by the commissioner on an approved alternative exit-level assessment. A student is eligible if he or she enrolls after January 1 of the year in which the student is otherwise eligible to graduate and is enrolling for the first time in a public school in this state or after an absence of at least four years from any public school in this state.

In the spring of 2003, the TEA conducted college readiness studies to provide data to assist the Texas Higher Education Coordinating Board (THECB) in establishing performance standards on the exit-level TAKS assessments that would demonstrate a student's readiness to enroll in an institution of higher education. These studies show the link between student performance on the TAKS and performance on the SAT® and the ACT® assessments. The studies included information about the student performance level that would equate to the performance level required for the TAKS exit-level assessment instrument for the same subject.

The proposed new rules in 19 TAC Chapter 101, Assessment, Subchapter DD, Commissioner's Rules Concerning Alternative Exit-Level Assessments, would explain the testing requirements to receive a high school diploma from a Texas public school; establish the criteria for determining a student's eligibility to substitute an alternative exit-level assessment for a TAKS exit-level assessment to qualify for a high school diploma from a Texas public school; and define the procedures for verifying the results of an alternative exit-level assessment for an eligible student. The proposed new rules include the following provisions.

Section 101.4001 would explain the testing requirements to receive a high school diploma from a Texas public school. The commissioner proposes adopting the SAT® verbal/critical reading tests and ACT® English and mathematics tests as alternative exit-level assessments that eligible students with qualifying scores may substitute respectively for TAKS exit-level assessments in English language arts and mathematics beginning in

the spring of 2006. The commissioner also proposes applying the results of the college readiness studies to establish the required passing standards on these assessments. The proposed passing standards for the SAT® alternative assessment for English language arts is at least 472 and for mathematics is at least 461. The proposed passing standard for the ACT® alternative assessment for English language arts is at least 17.7 and for mathematics is at least 19.5. This section also would specify that once a district or charter school has verified that the student is eligible for and has satisfied the requirements under this subchapter and satisfied the coursework requirements to be eligible for a high school diploma in Texas, the district or charter school is authorized to grant a diploma to the student.

Section 101.4003 would establish the criteria for determining a student's eligibility to substitute an alternative exit-level assessment for a TAKS exit-level assessment to qualify for a high school diploma from a Texas public school. This section would specify that a school district or charter school will be responsible for determining the eligibility of a student under this subchapter.

Section 101.4005 would define the procedures for verifying the results of an alternative exit-level assessment for an eligible student. This section would specify that students who are eligible under the new law will be required to provide to the district or charter school his or her official results from an approved alternative exit-level assessment. Upon receipt of the results on an applicable assessment from an eligible student, the school district or charter school must verify the student's score and determine whether the student has met the performance standard required to qualify for a public high school diploma in Texas as established by the commissioner.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Barnes has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ease the transition for students who move to Texas in the spring of their graduating year. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §39.025, which requires the commissioner of education to adopt by rule one or more alternative nationally recognized norm-referenced assessment instruments to administer to a student to qualify for a high school diploma. The statute also requires the commissioner to establish a required performance level for any such assessment instrument that is at least as rigorous as the performance level for the Texas Assessment of Knowledge and Skills test for the same subject area.



The new sections implement the Texas Education Code, §39.025.

§101.4001. Testing Requirements for Graduation.

(a) Each school district and charter school shall test eligible students in accordance with the Texas Education Code (TEC), Chapter 39, Subchapter B. All students must pass exit-level assessments in English language arts, mathematics, science, and social studies to qualify for a high school diploma from a Texas public school.

(b) In accordance with the TEC, Chapter 39, Subchapter B, the commissioner of education adopts the SAT® verbal/critical reading and mathematics tests and the ACT® English and mathematics tests as alternative exit-level assessments that eligible students with qualifying scores may substitute respectively for the Texas Assessment of Knowledge and Skills (TAKS) exit-level assessments in English language arts and mathematics beginning in the spring of 2006.

(c) The commissioner establishes the level of performance considered to be satisfactory on the approved alternative exit-level assessments as follows.

(1) The required passing standard to qualify to substitute the SAT® verbal/critical reading test for the TAKS exit-level English language arts assessment is at least 472.

(2) The required passing standard to qualify to substitute the SAT® mathematics test for the TAKS exit-level mathematics assessment is at least 461.

(3) The required passing standard to qualify to substitute the ACT® English test for the TAKS exit-level English language arts assessment is at least 17.7.

(4) The required passing standard to qualify to substitute the ACT® mathematics test for the TAKS exit-level mathematics assessment is at least 19.5.

(d) An eligible student who has met the passing standard as set by the commissioner on a state-approved alternative exit-level assessment in a particular subject area has satisfied the exit-level testing requirement in that subject area.

(e) Once a district or charter school has verified that the student is eligible for and has satisfied the requirements under this subchapter and satisfied the coursework requirements to be eligible for a high school diploma in Texas, the district or charter school is authorized to grant a diploma to the student.

§101.4003. Determining Eligibility.

(a) A student is eligible to substitute an alternative exit-level assessment for a Texas Assessment of Knowledge and Skills (TAKS) exit-level assessment for purposes of this subchapter if the student after January 1 of the year in which the student would otherwise be eligible to graduate:

(1) enrolls in a public school in Texas for the first time; or

(2) enrolls in a public school in Texas after an absence of at least four years from any public school in this state. A student meets this requirement if he or she has not been enrolled for one or more days in a public school in Texas in the four years preceding the day on which the student enrolls in a Texas public school after January 1 of the year in which the student would otherwise be eligible to graduate.

(b) Each school district and charter school shall be responsible for verifying a student's eligibility for the alternative exit-level assessment.

§101.4005. Verification of Results.

(a) A student who is eligible to substitute an approved alternative exit-level assessment for a Texas Assessment of Knowledge and Skills (TAKS) exit-level assessment is responsible for providing to the school district an official copy of his or her scores from the alternative assessment.

(b) A school district or charter school must, upon receipt of official results from an approved alternative exit-level assessment for a student who is eligible under this section:

(1) verify the student's score on the alternative assessment; and

(2) determine whether the student met the performance standard required to qualify for a public high school diploma in Texas as established by the commissioner of education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600363

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 475-1497



## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE STATEWIDE TESTING CALENDAR AND UIL PARTICIPATION

### 19 TAC §101.5001, §101.5003

The Texas Education Agency (TEA) proposes new §101.5001, and §101.5003, concerning the statewide testing calendar and University Interscholastic League (UIL) participation. The proposed new rules would implement Texas Education Code (TEC), §33.0812, added by Senate Bill 658, 79th Texas Legislature, 2005, relating to the scheduling of certain UIL competitions. The proposed new rules would address provisions related to the testing calendar and alternate test dates.

The 79th Texas Legislature passed Senate Bill 658, which prohibits participation in a UIL area, regional, or state competition during the week in which the primary administration of assessment instruments under TEC, §39.023(a), (c), or (l), occurs. This legislation also requires that the commissioner adopt rules to provide the UIL with a periodic calendar of dates reserved for testing for their planning purposes. TEC, §33.0812, added by this bill specifies that the periodic calendar must be provided at least every three years on or before May 1 of the year preceding the three-year cycle of reserved testing dates. In adopting rules, this legislation requires that the commissioner include a procedure for changing, in exceptional circumstances, testing dates reserved under the periodic calendar; define circumstances that constitute exceptional circumstances; and establish criteria for determining whether a UIL area, regional, or state competition must be canceled if that event conflicts with a changed testing date.

The proposed new rules in 19 TAC Chapter 101, Assessment, Subchapter EE, Commissioner's Rules Concerning the Statewide Testing Calendar and UIL Participation, would address provisions related to the testing calendar and alternate test dates, as follows.

Section 101.5001 would include the provisions that the commissioner provide the UIL with the three-year calendar through publication on the TEA website and that the commissioner notify the UIL of any necessary changes to the schedule.

Section 101.5003 would include the provision that alternate test dates be considered on a case-by-case basis. The new rule would also include the definition of exceptional circumstances that may affect district or campus ability to administer or student performance on an assessment.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Barnes has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be to reduce or eliminate scheduling conflicts between UIL events and statewide assessment. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §38.0812, which requires the commissioner of education to adopt rules to provide the UIL with a periodic calendar of dates reserved for testing. In adopting rules, the statute requires the commissioner to include a procedure for changing, in exceptional circumstances, testing dates reserved under the periodic calendar; define circumstances that constitute exceptional circumstances; and establish criteria for determining whether a UIL area, regional, or state competition must be canceled if the event conflicts with a changed testing date.

The new sections implement the Texas Education Code, §38.0812.

§101.5001. Testing Calendar.

(a) In accordance with Texas Education Code, §38.0812, the commissioner of education shall determine the school week during the school year in which the primary administrations of assessment instruments are administered.

(b) Through publication on the Texas Education Agency website, the commissioner shall provide the University Interscholastic League (UIL) with a three-year calendar of dates, beginning with the 2006-2007 school year, reserved for testing on or before May 1 of the year preceding the three-year cycle of reserved testing dates.

(c) The commissioner may change the dates reserved for testing as necessary. The commissioner shall notify the UIL of any changes to the schedule for the primary administrations of the statewide assessments.

(d) If a change to the primary administration testing calendar creates a scheduling conflict between a UIL area, regional, or state competition and the statewide assessments, the commissioner shall determine whether those UIL events must be cancelled or rescheduled.

§101.5003. Alternate Test Dates.

(a) The commissioner of education shall consider requests from districts or campuses for alternate test dates on a case-by-case basis. Alternate test dates will only be allowed if the campus or district is closed on the day on which testing is scheduled or if there is an exceptional circumstance as defined under this section that may affect a district's or campus' ability to administer an assessment or the students' performance on an assessment.

(b) For the purposes of this section, exceptional circumstances include but are not limited to the following:

(1) inclement weather or natural disasters that would cause a district or a campus to be closed or which would cause a small percentage of students to be in attendance on the day testing is scheduled;

(2) health epidemics that result in a large number of students being absent on the day of testing;

(3) death of a student or school official that may impact student performance; and

(4) sudden emergencies that occur on the day of testing or shortly before testing that may inhibit students from completing the assessments, such as a fire on campus, a bomb threat, an extended power outage, or a water main break.

(c) If an alternate test date for the primary test administration is approved, the commissioner may prohibit the district or campus from participating in UIL competitions on the new test date if that is determined to be in the best interest of the district, campus, and students.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600364

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS**

#### **CHAPTER 367. ENFORCEMENT**

##### **22 TAC §367.14**

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §367.14, which specifies the procedures that

should be followed when a contested case is referred to the State Office of Administrative Hearings (SOAH) by the Board's Enforcement Committee.

Contested cases referred to hearings before SOAH must follow the requirements of SOAH Rules, the Administrative Procedure Act, the Plumbing License Law and Board Rules. The proposed amendments to §367.14 are necessary to avoid any inconsistencies and unnecessary duplication that could exist between the requirements of §367.14, SOAH Rules and the Administrative Procedure Act. The proposed amendments delete unnecessary language and add simplified new language to clearly specify that contested cases shall be conducted in accordance with SOAH Rules, the Administrative Procedure Act, the Plumbing License Law and Board Rules.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal impact on state or local government, small businesses or persons required to comply with the proposed amendments.

Mr. Maxwell also has determined that each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be clear standards to follow when contested cases are presented to SOAH.

Comments on the proposed amendments may be submitted within 30 days of publication of the proposal in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200, or by e-mail to [info@tsbpe.state.tx.us](mailto:info@tsbpe.state.tx.us).

The amendments to §367.14 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251, and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. The amendments are also proposed under Texas Government Code Annotated, Chapter 2001 (the Administrative Procedure Act) and Texas Administrative Code, Title 1, Part 7 (SOAH Rules).

No other statute, article or code is affected by the proposed amendments.

§367.14. *Contested Case; State Office of Administrative Hearings.*  
(a) - (c) (No change.)

(d) The Board shall conduct the hearing in accordance with all applicable provisions of the: [~~the Administrative Procedure Act~~]

- (1) Administrative Procedure Act;
- (2) State Office of Administrative Hearings Rules;
- (3) Plumbing License Law; and
- (4) Board Rules.

{(e) The Board shall give reasonable notice of the hearing to the Respondent of not less than 10 days before the hearing. In addition to any requirements of the Administrative Procedure Act, related to notice of hearing, the Board shall:}

{(1) mail the notice to the last known address provided to the Board by the Respondent via regular and certified mail;}

{(2) state in the notice that all parties will have the opportunity to respond to and present evidence and argument on all issues involved and to be represented by legal counsel; and}

{(3) shall include the following language in capital letters in bold face type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE.}

{(f) After proper notice of the hearing, if a respondent fails to appear in person or through their legal representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or other responsive pleading has been filed with the Board or the State Office of Administrative Hearings, the Administrative Law Judge, upon motion by the Board, shall enter a default judgment in the matter adverse to the Respondent who has failed to attend the hearing.}

{(g) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the Respondent in which the factual allegations against the Respondent contained in the Complaint shall be admitted as prima facie evidence, and deemed admitted as true, without any requirement for additional proof to be submitted by the Board.}

{(h) Following the hearing, the Administrative Law Judge shall make findings of fact and conclusions of law and promptly issue a Proposal for Decision on the matter to the Board, with a copy sent to the Respondent.}

{(i) The Administrative Law Judge shall allow no more than 15 days from the date that the Proposal for Decision is served for any party to file exceptions to the Proposal for Decision. The Proposal for Decision is considered served on the day that the Proposal for Decision is sent to all parties by the Administrative Law judge.}

{(j) Following the Board's consideration of the Proposal for Decision, the Board shall issue an order stating its final decision on the matter.}

{(k) The Enforcement Committee shall provide notice to the Respondent of the Board's order and include a statement of the Respondent's right to judicial appeal of the order. The Respondent may:}

{(1) pay the penalty; or}

{(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 18, 2006.

TRD-200600242

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 936-5224



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

## 22 TAC §501.81

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.81, concerning Firm License Requirements.

The amendment to §501.81 will remove the text in subsection (c) regarding the use of a disclaimer when a licensee uses his or her CPA designation in association with an unlicensed firm and replaces it with a reference to new rule 501.86; also changes language in subsection (d)(2) to conform with Section 201.101 of the Finance Code.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state and local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity when determining the proper use of the disclaimer and when to obtain a firm license.

The probable economic cost to persons required to comply with the amendment will be zero because the amendments do not require persons to comply with the rule; instead the amendment directs persons to another rule.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not impose any obligations upon affected businesses; instead, it points to another rule that could so affect these businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the

amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### *§501.81. Firm License Requirements.*

(a) A Firm, including a sole proprietorship, may not provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license.

(b) An individual may not provide attest services unless:

(1) the individual has a license or registration issued under the Act; and

(2) the individual offers the attest services through an entity holding a firm license.

(c) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer contained in §501.86(a) of this title (relating to Required Disclaimers).<sup>1</sup> "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.]

(d) The requirements of subsection (c) of this section do not apply with regard to a certificate or registration holder performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law; or

(2) as an employee, officer, or director of a financial [federally insured depository] institution, as defined by §201.101, Finance Code, from preparing or presenting records or documents when lawfully acting within the scope of the [legally permitted] activities of the institution [institution's trust department].

(e) On the third determination by the board that a certificate holder has practiced without a license or through an unregistered entity in violation of subsection (c) of this section, the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

(f) Interpretive Comment: A certificate or registration holder who is employed by an unlicensed firm that offers services that fall within the definitions of the client practice of public accountancy as defined in §501.2(9) and §501.2(19) of this title (relating to Definitions) and §901.003 of the Act (relating to Practice of Public Accountancy) must comply with the disclaimer requirement found in subsection (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600302

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 305-7848



## 22 TAC §501.86

The Texas State Board of Public Accountancy (Board) proposes new rule §501.86, concerning Required Disclaimers.

The new rule §501.86 will provide guidance to licensees and non-licensees regarding the use of certain disclaimers in association with unlicensed firms.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state and local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be greater clarity regarding what terms are reserved for license holders and under what circumstances reserved terms can be used by non-license holders.

The probable economic cost to persons required to comply with the new rule will vary according to the uses the affected persons put to the restricted terms.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on March 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because there is a grace period that will allow affected businesses to make the required changes when they update written and promotional materials during the normal course of business.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

### §501.86. Required Disclaimers.

(a) A firm must include the disclaimer "This firm is not a CPA firm" in each promotional or written statement if:

- (1) the firm does not hold a firm license issued by the board;
- (2) the firm offers services to the public that are not attest services as defined by the Act and the board's rules, but which constitute the practice of public accountancy as defined by the Act;
- (3) the firm employs or engages one or more certificate or registration holders to perform the offered services; and
- (4) the firm references the service provider's status as a CPA in the promotional or written statement.

(b) A firm must include the disclaimer "This firm is not a CPA firm" in each promotional or written statement if:

- (1) the firm does not hold a firm license issued by the board;
- (2) the firm offers services to the public that are not attest services as defined by the Act and the board's rules, but which are not prohibited by the Act to be performed by non-licensed persons or firms; and
- (3) the firm uses one or more phrases commonly understood not to involve services that require the use of GAAP, GAAS, or GAGAS, and that incorporate terms reserved by the Act for use by persons with a certificate and license issued by the board or firms licensed by the board.

(c) The disclaimer must be included in conspicuous proximity to the name of the firm, referenced by an asterisk, and be printed in type not less bold than that contained in the body of the promotional or written statement. If the promotional statement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(d) Nothing in this section is to be construed to permit a firm that is not licensed by the board to use a term reserved for the use of certificate or registration holders by the Act in the name or assumed name of the firm and such use is expressly prohibited.

(e) Interpretive Comment: A disclaimer is required to be used on business cards that contain the unlicensed firm's name and the certificate or registration holder's name and status as a CPA. A disclaimer is required to be used on letterhead bearing the unlicensed firm's name that contains a communication signed by the certificate or registration holder with a designation of his status as a CPA. The term "internal

audit services" is an example of a phrase commonly understood not to involve services that require the use of GAAP, GAAS, or GAGAS, and thus can be used by a non-licensee with a disclaimer. The phrase "forensic accounting services" does imply the use of GAAP, GAAS, or GAGAS when the engagement concerns conformity to those standards and therefore cannot be performed by an unlicensed firm. The phrase "forensic financial services" is preferable when offering fraud detection and other financial investigation services that do not involve the use of GAAP, GAAS or GAGAS so as not to confuse the public. Use of the phrase "forensic financial services" does not require the use of a disclaimer. This section does not permit a non-licensee to use stand-alone terms such as "accountant "forensic accounting services". This section does not permit a non-licensee to use stand-alone terms such as "accountant", "auditor" and other terms reserved under the Act, even with a disclaimer. Promotional or written statements include an advertisement in the classified section of a newspaper or periodical or a listing in a directory under the heading "Accountants" or "Accounting Services" and require the use of a disclaimer. A disclaimer is not required every time an unlicensed firm's name appears in an engagement letter or other contract that contains phrases commonly understood not to involve services that require the use of GAAP, GAAS, or GAGAS or is signed by a certificate or registration holder that includes reference to his status as a CPA, so long as the disclaimer appears on the letterhead containing the engagement letter or contract, or if not on letterhead, in the paragraph that defines the firm as a party to the agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600303

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 305-7848



## SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

### 22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

The amendment to §501.90 will include criminal prosecution for a crime involving physical harm or threat of physical harm to a person as a discreditable act, as well as change a reference from §519.16 to §519.17.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do or not do anything new or additional and the Board already investigates and prosecutes discreditable acts under §501.90.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the

amendment will be zero because the amendment does not require anyone to do or not do anything new or additional and the Board already investigates and prosecutes discreditable acts under §501.90.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do or not do anything new or additional and the Board already investigates and prosecutes discreditable acts under §501.90.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clearly stated that crimes involving physical harm or threat of physical harm will be investigated and prosecuted as discreditable acts.

The probable economic cost to persons required to comply with the amendment should not change because the Board already pursues discreditable act cases.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 3, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the Board already pursues discreditable act cases.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §501.90. Discreditable Acts.

A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) - (4) (No change.)

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, or a criminal prosecution for a crime of moral turpitude, or a criminal prosecution involving alcohol abuse or

controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm to a person;

(6) - (18) (No change.)

(19) Interpretive Comment: The board has found in §519.7 [§519.16] of this title (relating to Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Individuals with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 [§519.16] of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 519. PRACTICE AND PROCEDURE

### SUBCHAPTER A. GENERAL PROVISIONS

#### 22 TAC §519.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.2 concerning Definitions.

The amendment to §519.2 will define "direct administrative costs" as found in Tex. OCC. Code Section 901.501(a)(9).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expenses by the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expenses by the state and local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expenses by the state.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be increased recovery of the Board's expenses that are incurred in prosecuting cases against licensees.

The probable economic cost to persons required to comply with the amendment will be zero for those licensees who do not violate the Act or Rules. This amendment does not require compliance; other rules require compliance. This amendment assesses additional costs for non-compliance with those other rules.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses. To the extent that this amendment may be perceived as being the source or the additional administrative cost assessment, the economic effect on small businesses will vary depending upon the individual circumstances peculiar to each licensee at the administrative hearing.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §519.2. Definitions.

In this chapter:

(1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to board rule 501.93 of this title (relating to Responses);

(2) "Administrative costs" means those costs actually incurred by the board through payment to outside vendors and the [reasonable value of] resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including but not limited to, staff salary, payroll taxes and benefits and other non-salary related expenses[ attorney's fees and expenses, legal assistant's fees and expenses], expert fees and expenses, witness fees and expenses, fees and expenses paid to the Office of the Attorney General,

filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, travel costs[support personnel costs, associated overhead costs] and any other cost or fee that can [be] reasonably be attributed to the matter;

(3) "ALJ" means administrative law judge;

(4) "APA" means the Texas Administrative Procedure Act, chapter 2001 of the Texas Government Code;

(5) "Board staff" means the employees or independent contractors of the board;

(6) "Committee" means an enforcement committee of the board which are the Behavioral Enforcement Committee, the Technical Standards Review Committee and the Major Case Enforcement Committee;

(7) "Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board;

(8) "Complainant" means the person or entity who initiates a complaint with board against a certificate or registration holder;

(9) "PFD" means the proposal for decision prepared by an administrative law judge;

(10) "Respondent" means a certificate or registration holder against whom a complaint has been filed; and

(11) "SOAH" means the State Office of Administrative Hearings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §519.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.7 concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.

The amendment to §519.7 will include additional misdemeanors that effect the practice of public accountancy; namely, those misdemeanors involving assault.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state and local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expense by the state.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be the greater protection to the public by the Board from license holders who commit assault or related crimes.

The probable economic cost to persons required to comply with the amendment will be zero for those license holders who are not convicted or subject to deferred adjudication for a crime involving assault. This amendment does not require compliance.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses. To the extent that this amendment may be perceived as being the source of administrative costs and penalties, the economic effect on small businesses will vary depending upon the individual circumstances and in accordance with administrative penalty guidelines published by the Board.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§519.7. Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.*

(a) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve dishonesty or fraud may subject a certificate or registration holder to



disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication or community supervision for any crime involving dishonesty or fraud to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve dishonesty or fraud directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve dishonesty or fraud:

- (1) Theft;
- (2) Theft of Service;
- (3) Tampering with Identification Numbers;
- (4) Theft of or Tampering with Multichannel Video or Information Services;
- (5) Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device;
- (6) Sale or Lease of Multichannel Video or Information Services Device;
- (7) Possession, Manufacture, or Distribution of Certain Instruments Used to Commit Retail Theft;
- (8) Forgery;
- (9) Criminal Simulation;
- (10) Trademark Counterfeiting;
- (11) Stealing or Receiving Stolen Check or Similar Sight Order;
- (12) False Statement to Obtain Property or Credit;
- (13) Hindering Secured Creditors;
- (14) Credit Card Transaction Record Laundering;
- (15) Issuance of Bad Check;
- (16) Deceptive Business Practices;
- (17) Rigging Publicly Exhibited Contest;
- (18) Misapplication of Fiduciary Property or Property of Financial Institution;
- (19) Securing Execution of Document by Deception;
- (20) Fraudulent Destruction, Removal, or Concealment of Writing;
- (21) Simulating Legal Process;
- (22) Refusal to Execute Release of Fraudulent Lien or Claim;
- (23) Breach of Computer Security;
- (24) Unauthorized Use of Telecommunications Service;
- (25) Theft of Telecommunications Service;
- (26) Publication of Telecommunications Access Device;
- (27) Insurance Fraud;

- (28) False Alarm or Report;
- (29) Engaging in Organized Criminal Activity;
- (30) Violation of Court Order Enjoining Organized Criminal Activity;
- (31) Unlawful Use of Criminal Instrument;
- (32) Unlawful Access to Stored Communications;
- (33) Burglary of Vehicles;
- (34) Burglary of Coin-Operated or Coin Collection Machines;
- (35) Coercion of Public Servant or Voter;
- (36) Improper Influence;
- (37) Gift to Public Servant by Person Subject to His Jurisdiction;
- (38) Offering Gift to Public Servant;
- (39) Perjury;
- (40) False Report to Peace Officer or Law Enforcement Employee;
- (41) Tampering With or Fabricating Physical Evidence;
- (42) Tampering With Governmental Record;
- (43) Fraudulent Filing of Financing Statement;
- (44) False Identification as Peace Officer;
- (45) Misrepresentation of Property;
- (46) Record of a Fraudulent Court; and
- (47) Bail Jumping and Failure to Appear.

(b) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve moral turpitude may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication or community supervision for any crime involving moral turpitude to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve moral turpitude directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve moral turpitude:

- (1) Prostitution;
- (2) Promotion of Prostitution;
- (3) Indecent Exposure;
- (4) Public Lewdness;
- (5) Obscenity;
- (6) Obscene Display or Distribution;
- (7) Sale, Distribution, or Display of Harmful Material to Minor;
- (8) Employment Harmful to Children; and

(9) Abuse of a Corpse.

(c) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve alcohol abuse or controlled substances may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication or community supervision for any crime involving alcohol abuse or controlled substances to relate directly to the practice of public accountancy and may subject a certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve alcohol abuse or controlled substances directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve alcohol abuse or controlled substances:

- (1) Possession of less than 28 grams of a controlled substance listed in penalty group 3 under the Texas Penal Code;
- (2) Possession of less than 28 grams of a controlled substance listed in penalty group 4 under the Texas Penal Code;
- (3) Manufacture, delivery or possession of a controlled substance listed in a schedule of controlled substances, but not listed in a penalty group under the Texas Penal Code;
- (4) Manufacture, delivery or possession of a controlled substance analogue;
- (5) Possession or delivery of marihuana;
- (6) Possession or delivery of drug paraphernalia;
- (7) Possession or transport of chemicals with the intent to manufacture a controlled substance; and
- (8) Any misdemeanor involving intoxication under the influence of alcohol or a controlled substance.

(d) Final conviction or placement on deferred adjudication or community supervision in connection with misdemeanors that involve physical injury or threats of physical injury to a person may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because certificate or registration holders regularly deal directly with clients and other members of the public during the performance of their professional duties, often under highly stressful conditions, the public in general, and the business community in particular, rely on the stability and integrity of certificate or registration holders in the provision of accounting services. The board considers conviction or placement on deferred adjudication or community supervision for any crime involving physical injury or threats of physical injury to a person to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve physical injury or threats of physical injury to a person directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve physical injury or threats of physical injury to a person:

- (1) Assault;
- (2) Sexual Assault;
- (3) Aggravated Sexual Assault;

(4) Injury to a Child, Elderly Individual or Disabled Individual;

- (5) Abandoning or Endangering a Child;
- (6) Deadly Conduct;
- (7) Terroristic Threat;
- (8) Tampering with Consumer Products; and
- (9) Leaving a Child in a Vehicle.

(e) ~~[(d)]~~ Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers repeated violations of any criminal law to relate directly to the practice of public accountancy.

(f) ~~[(e)]~~ A conviction or placement on deferred adjudication or community supervision for a violation of any state or federal law that is equivalent to an offense listed in subsections (a) through (e)~~[(d)]~~ of this section is considered to directly relate to the practice of accounting and may subject a certificate or registration holder to discipline by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §519.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.9 concerning Administrative Penalty Guidelines.

The amendment to §519.9 will make a change to the Administrative Penalty Guideline chart only. The change is in #21 of Figure 22 TAC §519.9(a) where the sentence "moral turpitude; abuse of alcohol or controlled substances; or physical injury or threats of physical injury to a person" has been added to the end of that section.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the Board already imposes administrative penalties for final convictions or deferred adjudication of enumerated crimes.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not address reduction in costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero for loss in revenue but an increase in revenue will vary in accordance with the range of administrative penalties established by the rule.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarity regarding the amount of administrative penalty that may be imposed by the Board upon persons convicted of crimes or subject to deferred adjudication involving physical harm or threat of physical harm.

The probable economic cost to persons required to comply with the amendment will vary in accordance with range of administrative penalties established by the rule.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 3, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment addresses only those persons convicted or subjected to deferred adjudication or of a crime involving physical harm or threat of physical harm.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### *§519.9. Administrative Penalty Guidelines.*

(a) The following table contains guidelines for the assessment of administrative penalties in disciplinary matters. In determining whether a violation is minor, moderate or major, the board will apply the factors to be considered set forth in §901.552(b) of the Public Accountancy Act. In all cases where the board has determined a violation has occurred, administrative costs will be assessed, regardless of any other sanction imposed by the board.

Figure: 22 TAC §519.9(a)

(b) The amounts specified in subsection (a) of this section are guidelines only. The board retains the right to increase or decrease the

amount of an administrative penalty based on the circumstances of each case it considers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 521. FEE SCHEDULE

### 22 TAC §521.14

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.14, concerning Eligibility Fee.

The amendment to §521.14 will add a new subsection (c) that reads "The eligibility fee may be paid electronically through the State of Texas online e-pay system and applicable processing fees for the use of this service will be added to the total fee paid." and changes the old subsection (c) into subsection (e). The new subsection (c) will give potential applicants for the computer based CPA exam the option of paying their eligibility fee electronically. It also adds a new subsection (d) that grants applicants 180 days to complete the application before the application fee is forfeited.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be approximately \$2000 in increased revenue to the agency. As a self-directed, semi-independent agency, this revenue will not go directly to the state but to the agency.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be the option of conveniently paying the CPA examination eligibility fee electronically.

The probable economic cost to persons required to comply with the amendment will vary depending upon the amount of the applicable fees. The amendment does not require persons to pay this fee electronically.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Com-

ments must be received at the Board no later than noon on March 3, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because this rule does not apply to small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§521.14. Eligibility Fee.*

(a) - (b) (No change.)

(c) The eligibility fee may be paid electronically through the State of Texas online e-pay system and applicable processing fees for the use of this service will be added to the total fee paid.

(d) Upon receipt by the board of an incomplete application, an applicant has 180 days to complete the application. If the application is not completed within that time, the application is terminated, the eligibility fee is forfeited and the applicant must file a new application and pay a new eligibility fee to continue with the examination process.

(e) [(e)] The fee paid shall be valid for 90 days after the board determines that an applicant is eligible for a section of the CPA examination. The board may extend the 90-day [90 day] eligibility to accommodate the psychometric evaluation and performance of test questions by the test provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

## SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

### 22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112, concerning Mandatory CPE Attendance.

The amendment to §523.112 will make it clear that only 40 hours of CPE is required to re-activate a license on retired or disabled status.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expenses by the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expenses by the state and local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the performance of additional services or the incurring of additional expenses by the state.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the requirements for re-activating a license on retired or disabled status.

The probable economic cost to persons required to comply with the amendment will vary according to the cost required to take the necessary 40 hours of CPE.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment focuses on a very narrow subset of license holders, and requires that subset to invest time and resources in completing a CPE requirement they could be asked to invest under normal circumstances.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the

statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§523.112. Mandatory CPE Attendance.*

A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. For all CPE completed after January 1, 2005, except as provided by board rule, this CPE shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

(1) - (2) (No change.)

(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report [~~CPE hours missed as a result of the exemption subject to~~] a minimum of 40 CPE hours. Such CPE hours shall be accrued from the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Board Rules and Ethics Course);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) (No change.)

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue [~~CPE hours missed as a result of the exemption subject to~~] a minimum of 40 CPE hours. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Board Rules and Ethics Course).

(C) - (F) (No change.)

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600308

Rande Herrell  
General Counsel  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: March 5, 2006  
For further information, please call: (512) 305-7848



## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

### CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

#### SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

##### 22 TAC §661.52

The Texas Board of Professional Land Surveying (TBPLS) proposes a new rule §661.52, concerning Inactive Status. This section will provide procedures for implementing Section 1071.263 of the Professional Land Surveying Practices Act.

The new rule will clarify the procedures for implementing Section 1071.263 of the Professional Land Surveying Practices Act.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this new rule.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the procedures regarding inactive status.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rules as proposed.

Comments on the new rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at (512) 452-7711 or may be sent electronically to [sandy.smith@mail.capnet.state.tx.us](mailto:sandy.smith@mail.capnet.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new rule is proposed pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new rule implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

##### §661.52. Inactive Status.

(a) A Surveyor whose registration is in good standing may apply for Inactive registration status on a form prescribed by the Board.

(b) An Inactive Surveyor may not practice professional surveying. If an Inactive Surveyor engages in the practice of professional surveying, the Inactive Surveyor's registration may be suspended or

revoked and may be fined as allowed by the Professional Land Surveying Practices Act.

(c) An Inactive Surveyor shall not use their seal during any period that the registration is Inactive.

(d) An Inactive Surveyor shall pay an annual fee as prescribed by the Board.

(e) In order to return the registration to active status, an Inactive Surveyor who has been on Inactive Status for less than one year must meet the following requirements.

(1) The Surveyor must apply on a form prescribed by the Board. The Board will review the form. After receipt of a complete application, the Board will make a decision on the application at its next scheduled meeting.

(2) The Surveyor must pay the full renewal fee as prescribed by the Board.

(3) The Surveyor must fulfill the continuing professional educational requirement as specified in the Act.

(4) Once the application, fee, and proof of continuing professional education have been approved by the Board, the registration will be Active.

(f) An Inactive Surveyor whose registration has been Inactive for a continuous period of one year or more must meet the following requirements.

(1) The Surveyor must apply on a form prescribed by the Board.

(2) The Surveyor must pay the full renewal fee as prescribed by the Board.

(3) The Surveyor must fulfill the continuing professional educational requirement for the current year as specified in the Act.

(4) Once the application, fee, and proof of continuing professional education have been received in the office of the Board, the registration will be Active.

(g) The Board may require that an applicant submit a verification of compliance with the laws as required by statute as part of the application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600316

Lois Coleman

Acting Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 452-9427



## SUBCHAPTER E. CONTESTED CASES

### 22 TAC §661.63

The Texas Board of Professional Land Surveying (TBPLS) proposes a new rule §661.63, concerning Frivolous Complaints. This section establishes the requirements and procedures to

clarify the definition of frivolous and harassment as used in Section 1071.204(f) of the Professional Land Surveying Practices Act.

The new rule will clarify the definition of frivolous and harassment as used in Section 1071.204(f) of the Professional Land Surveying Practices Act.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this new rule.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the definition of what constitutes frivolous and harassment in regards to complaints.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rules as proposed.

Comments on the new rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at (512) 452-7711 or may be sent electronically to [sandy.smith@mail.capnet.state.tx.us](mailto:sandy.smith@mail.capnet.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new rule is proposed pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new rule implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

#### §661.63. Frivolous Complaints.

(a) Following a final decision of the board on a complaint, the license holder who was the subject of the complaint may submit a written request to the board that the complaint be found frivolous.

(b) A written request should provide a reasoned justification showing that the complaint was made for the purpose of harassment and that the complaint does not demonstrate harm to any person.

(c) The executive director and investigator shall review each written request that a complaint be found frivolous and recommend to the board whether the request should be granted or denied.

(d) A complaint may be considered to have been made for the purpose of harassment if, among other things:

(1) the complaint is filed as a threatening, abusive, or retaliatory tactic;

(2) the complaint is filed as a litigation tactic;

(3) the complaint is politically motivated; or

(4) the complaint is based on allegations that are beyond the scope of the board's jurisdiction under the Act.

(e) In evaluating whether a complaint is frivolous, when a complaint is filed or sworn to by a license holder, the board will take into account that all license holders are charged with knowledge of

the Act and rules and with the professional and technical standards of land surveying.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600314

Lois Coleman

Acting Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

### SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

#### 22 TAC §663.18

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.18, concerning Certification. This section identifies what the registered land surveyor can certify to.

The amendment will further clarify what the surveyor may certify to.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the certification process.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rules as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at (512) 452-7711 or may be sent electronically to [sandy.smith@mail.capnet.state.tx.us](mailto:sandy.smith@mail.capnet.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

#### §663.18. Certification.

(a) - (c) (No change.)

(d) A Surveyor shall certify only to factual information that the surveyor has personal knowledge of or to information within his professional expertise as a Land Surveyor unless otherwise qualified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600315

Lois Coleman

Acting Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 452-9427



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 229. FOOD AND DRUG SUBCHAPTER F. PRODUCTION, PROCESSING, AND DISTRIBUTION OF BOTTLED AND VENDED DRINKING WATER

##### 25 TAC §§229.81 - 229.91

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§229.81 - 229.91, concerning the production, processing, and distribution of bottled and vended drinking water.

#### BACKGROUND AND PURPOSE

The amendments are necessary to update vended water sampling requirements and increase the examination fee to cover the cost of administering the Bottled and Vended Water Certified Operator examination to applicants who do not make a passing score, and apply to retake the exam.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.81 - 229.91 have been reviewed and the department has determined the reasons for adopting the sections continue to exist because rules are required by the enabling statute, the department continues to regulate this activity, and persons engaged in the activity are required to comply with the rules.

#### SECTION-BY-SECTION SUMMARY

An amendment to §229.81 reflects the department name change to "Department of State Health Services." Amendments to §§229.82, 229.84, 229.87, 229.88, and 229.91 include grammatical corrections to improve sentence structure. An amendment to §229.83 updates language for consistency within the sections concerning water-hauling records. An amendment

to §229.85 updates examples for labeling and advertising. An amendment to §229.86 changes the sampling frequency from monthly to once every 90 calendar days; revises the name of the unit, phone number, and e-mail address; and deletes the requirement to report coliform negative samples to the department. An amendment to §229.89 increases the reexamination fee from \$25 to \$50. An amendment to §229.90 deletes language relating to a three-year license prior to January 1, 2005, because the department no longer issues three-year licenses, and updates the department name change.

#### FISCAL NOTE

Julie W. Loera, Manager, Foods Group, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of approximately \$125 per year. Implementation of the proposed sections will not result in any fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Loera has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. Persons who fail the Bottled and Vended Water Certified Operator examination and, therefore, are required to retake the exam will be required to pay an examination fee of \$50, which is an increase of \$25 each time the individual is required to retake the exam. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Loera has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public health benefits anticipated as a result of enforcing or administering the sections will be a safe drinking water supply from bottled and vended water dispensing devices.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's rights to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Julie W. Loera, Manager, Foods Group, Environmental and Consumer Safety Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6670. Comments will be

accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendments are proposed under the Health and Safety Code, §431.241, and §441.003, which provide the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapters 431 and 441; §12.0111, which requires the department to charge fees for issuing or renewing licenses; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapters 12, 431, 441, and 1001; Government Code, Chapter 531; and implement Government Code, §2001.039.

#### §229.81. General Provisions.

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this chapter, shall pertain to both bottled and vended water and shall have the following meanings unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Department--Department of State Health Services [Texas Department of Health].

(5) - (18) (No change.)

(d) (No change.)

#### §229.82. Sampling.

Bottled water must be sampled in accordance with the compliance procedures of Title 21, Code of Federal Regulations, Part 129. All required analyses must be performed by a laboratory acceptable to the department, certified by the U.S. Environmental Protection Agency (EPA), or certified by the primacy enforcement authority in any state which has been granted primacy by EPA, or certified by a third party organization acceptable to a primacy state.

#### §229.83. Water Hauling.

(a) (No change.)

(b) A person receiving water transported [hailed] by truck or trailer shall test and record the chlorine residual for compliance with the required minimum chlorine residual (30 TAC, §290.44(i)(2)(K)).

(c) Operational records detailing the amount of water received, the source of the water, and the chlorine residual readings, shall be maintained by the person receiving water that has been transported by truck or trailer. [shall be maintained by the person receiving water hauled by truck or trailer detailing the amount of water received, the source of the water, and chlorine residual readings.] The records shall be kept at the receiving facility for a period of two years and be available for inspection upon request.

#### §229.84. Standards for Microbiological Control.



Bottled and vended water production including transporting, processing, packaging, and storage, shall be conducted under such standards [e~~conditions~~] and controls as are necessary to minimize the potential for microbiological contamination of the finished product. These standards [e~~conditions~~] and controls shall include the following.

(1) - (3) (No change.)

§229.85. *Labeling and Advertising.*

(a) (No change.)

(b) The label must state the source of all artesian water, spring water, mineral water, well water, or drinking water sold. Source refers to the point of origin. Examples: Brook [Singing] Hollow Spring Water from Buck Hollow, Arkansas; drinking water obtained from Austin municipal water supply, Austin, Texas; well water from Bandera, Texas. Except that water processed by distillation, deionization, reverse osmosis, or other suitable process that alters the water's physical properties enabling it to meet the definition of purified as defined in §229.81(c)(11) of this title (relating to General Provisions) is not required to state the source. This exception only applies if all the water used in the finished product is processed to meet the definition of purified.

(c) (No change.)

§229.86. *Processing of Vended Water.*

(a) - (b) (No change.)

(c) Service, sampling and records shall meet the following requirements.

(1) (No change.)

(2) The vended water from each water dispensing device shall have a bacteriological analysis conducted a minimum of once every 90 calendar days [month] and if required by the department, shall also be analyzed for other physical, chemical, or microbiological parameters.

(A) Sample results reported as coliform positive or unsuitable for analysis shall be submitted by facsimile to the department within 24 hours of receipt of the sample results from a laboratory acceptable to the department. The person shall submit the results to the Foods Group, Policy/Standards/Quality Assurance Unit [Manufactured Foods Division] by facsimile at (512) 834-6681 [749-0263], or by e-mail at Feedback.MFD@dshs.state.tx.us [Feedback.MFD@tdh.state.tx.us].

~~[(B) Sample results reported as coliform negative shall be submitted to the department within ten calendar days of the last day of each month in which the sample(s) were taken. The person shall send the results to the department via mail to the following address: Manufactured Foods Division, Bottled and Vended Water Program, 1100 West 49th Street, Austin, Texas 78756; or via e-mail to Feedback.MFD@tdh.state.tx.us.]~~

~~[(B) [(C)] The person operating a water dispensing device shall maintain the original of all sample results for a period of two years. The drinking water analyses shall be performed by a laboratory acceptable to the department. A [to perform drinking water analyses; and a] copy of the analysis shall be available for review and copying during inspections.~~

(3) - (4) (No change.)

(5) Methods of testing for maximum contaminant levels (MCLs) for microbiological contaminants in water dispensed from water dispensing devices shall be performed as follows:

(A) (No change.)

(B) the water dispensing device shall be cleaned, sanitized and resampled immediately. Until the sample results are known the device [machine] shall remain out of service; and

(C) if after being cleaned and sanitized, the vended water is determined to be unsatisfactory, the machine shall remain out of service until the source of the contamination has been located and corrected and a negative sample obtained. The negative sample result shall be maintained in accordance with paragraph (2)(B) [~~2(C)~~] of this subsection.

§229.87. *Requirements for Approved Sources.*

Sources in Texas shall comply with the following requirements.

(1) Public water systems. Sources in Texas which are public water systems shall comply with the Texas Health and Safety Code, Chapter 341, Subchapter C<sub>2</sub> concerning drinking water standards and rules adopted [thereunder] by the Texas Commission on Environmental Quality, at 30 Texas Administrative Code (TAC), §§290.101 - 290.122 [290.121] (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems), and §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems).

(2) - (3) (No change.)

§229.88. *Certificates of Competency.*

A person may not furnish bottled or vended water to the public or for distribution to the public unless the bottled or vended water operator holds a certificate [of competency] under this chapter.

(1) A person may not furnish bottled water to the public or for distribution to the public unless the processing, bottling[;] and distribution of the bottled water is performed by or under the full-time supervision of a bottled and vended water operator who holds a certificate [of competency] under this chapter.

(2) A person may not furnish vended water to the public or for distribution to the public unless the processing, bottling[;] and distribution of the vended water is performed by or under the guidance and control of a bottled and vended water operator who holds a certificate [of competency] under this chapter.

§229.89. *Examination.*

(a) After payment of the required fee, an applicant shall pass [have passed] a written examination prescribed by the department. To pass the examination for a certificate [of competency], the applicant must achieve a score of 70% or more on the examination.

(1) (No change.)

(2) If the applicant fails the examination, the applicant may repeat the examination 30 days after the failed examination. The applicant must reapply and pay a re-application fee of \$50. [; pay another \$25 application fee; and repeat the examination after a period of 30 days from the last examination.]

(b) (No change.)

§229.90. *Certification and Renewal Fees.*

~~[(a) This subsection applies to all new and renewal applications received prior to January 1, 2005.]~~

~~[(1) Certification fee—\$50.]~~

~~[(2) Renewal fee—\$50.]~~

~~[(3) A certificate can be obtained by submitting a completed application with the \$50 certification fee and receiving a passing score on the examination. Certificates can be renewed by submitting~~

an application with the \$50 renewal fee. Certificates are valid for up to three years. Certificates will expire on December 31st, within three years of the date of issue. Fees will not be prorated. If the department has not received a completed application for renewal within 60 days following the expiration date, the certificate holder shall submit a new application and retake the examination.]

(a) [(b)] This subsection applies to all new and renewal applications [received on or after January 1, 2005].

(1) Certification fee--\$100.

(2) Renewal fee--\$100.

(3) A certificate can be obtained by submitting an application with the \$100 certification fee and receiving a passing score on the examination. Certificates can be renewed by submitting a completed application with the \$100 renewal fee. Certificates are valid for two years from the date of issuance or renewal. Certificates expire two years from the date of issuance. Fees will not be prorated. If the department has not received a completed application for renewal within 60 days following the expiration date, the certificate holder shall submit a new application and retake the examination.

(b) [(e)] An applicant or holder of a certificate shall pay the required fee before taking the examination or receiving a certificate [of competency].

(c) [(d)] All fees shall be made payable to the Department of State Health Services [Texas Department of Health] and are not refundable.

(d) [(e)] All applicants shall be in compliance with §1.301 of this title (relating to Suspension of License for Failure to Pay Child Support).

*§229.91. Suspension, Denial, or Revocation of Certificate.*

(a) Basis for suspension. The certificate [of competency] shall be suspended if [it is found that] the operator practices [practiced] fraud or deceit against the department or the public; or fails [failed] to use reasonable care, judgment[,], or application of knowledge in the performance of their duties.

(b) Basis for denial. The certificate [of competency] shall be denied if it is found:

(1) - (2) (No change.)

(3) that the operator practiced fraud or deceit; or failed to use reasonable care, judgment[,], or application of knowledge in the performance of their duties.

(c) Basis for revocation. The certificate [of competency] shall be revoked if it is found:

(1) (No change.)

(2) that the operator obtained the certificate through fraud, deceit[,], or through the submission of incorrect data on the application; or

(3) that the operator practiced fraud and deceit, or failed to use reasonable care, judgment[,], or application of knowledge in the performance of their duties.

(d) (No change.)

(e) Formal hearings. The department shall conduct hearings in accordance with the Administrative Procedure [Proceedures] Act, Texas Government Code §§2001.051 - 2001.902; and the department's formal hearing procedures in §§1.21, 1.23, 1.25[,], and 1.27 of this title (relating to Formal Hearing Procedures).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600310

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 458-7236



## SUBCHAPTER G. MANUFACTURE, STORAGE, AND DISTRIBUTION OF ICE SOLD FOR HUMAN CONSUMPTION, INCLUDING ICE PRODUCED AT POINT OF USE

### 25 TAC §§229.111 - 229.115

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§229.111 - 229.115, concerning the manufacture, storage and distribution of ice sold for human consumption, including ice produced at point of use.

#### BACKGROUND AND PURPOSE

The amendments revise ice manufacturing, storage, and distribution requirements; change the name of the department; and update regulatory references that have been changed.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.111 - 229.115 have been reviewed and the department has determined the reasons for adopting the sections continue to exist because rules are required by the enabling statute, the department continues to regulate this activity, and persons engaged in the activity are required to comply with the rules.

#### SECTION-BY-SECTION SUMMARY

Amendments to §§229.111, 229.114, and 229.115 reflect grammatical revisions to improve sentence structure. An amendment to §229.112 includes grammatical revisions and provides the department's name change to the "Department of State Health Services." An amendment to §229.113 updates the reference to the Texas Natural Resource Conservation Commission with the name change to the Texas Commission on Environmental Quality.

#### FISCAL NOTE

Julie W. Loera, Manager, Foods Group, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Loera has also determined that there will be no effect on small businesses or micro-businesses required to comply with

the sections as proposed. These entities will not be required to alter their business practices in order to comply with the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Loera has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public health benefits anticipated as a result of enforcing or administering the sections will be a safe ice supply from manufacturers and distributors.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's rights to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Julie W. Loera, Manager, Foods Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6670. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendments are authorized by the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapters 431 and 1001; Government Code, Chapter 531; and implement Government Code, §2001.039.

#### §229.111. General Provisions.

These [The] sections [will] supplement §§229.181 - 229.184 of this title (relating to Licensure of Food Manufacturers and Food Wholesalers - Including Good Manufacturing Practices and Good Warehousing

Practices in Manufacturing, Packing and Holding Human Food)[;] and §§229.211 - 229.222 of this title (relating to Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing[;] or Holding Human Food).

#### §229.112. Definitions.

The following words and terms, when used in these sections, [shall pertain to ice production and shall] have the following meanings unless the context clearly indicates otherwise.

(1) Approved laboratory--An approved laboratory is one which is acceptable to the department, certified by the U.S. Environmental Protection Agency (EPA)[;] or certified by the primacy enforcement authority in any state which has been granted primacy by EPA or certified by a third party organization acceptable to a primacy state.

(2) Approved source (when used in reference to a plant's product water or operations water)--A source of water and the water there from, whether it be from a spring, artesian well, drilled well, municipal water supply[;] or any source, that has been inspected and the water sampled, analyzed[;] and found to be safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply.

(3) Department--Department of State Health Services (DSHS) [The Texas Department of Health].

#### §229.113. Source Water.

(a) Requirements for approved source. Sources in Texas shall comply with the following requirements:

(1) Public water systems. Sources in Texas which are public water systems shall comply with the Texas Health and Safety Code, Chapter 341, Subchapter C, concerning drinking water standards and rules adopted [thereunder] by the Texas Commission for Environmental Quality [Texas Natural Resource Conservation Commission], at 30 Texas Administrative Code (TAC), §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems), and 30 TAC, §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems);

(2) - (3) (No change.)

(b) (No change.)

#### §229.114. Labeling of Packaged Ice.

(a) (No change.)

(b) Label information shall include:

(1) (No change.)

(2) the [an] accurate declaration of the net weight; and

(3) (No change.)

(c) (No change.)

#### §229.115. Ice Equipment.

(a) Ice equipment. Equipment used in ice plants or as part of the facilities producing ice at point of use including, but not limited to, portable can fillers, core sucking devices, drop tubes, tank lids, ice cans, ice manufacturing[;] and ice dispensers shall be handled and maintained in such a manner as to prevent contamination. Equipment shall be located away from areas that could cause contamination such as toilets, vestibules[;] and openings to the outside. If at any time equip-

ment is suspected as having been contaminated by improper handling, this equipment shall be sanitized.

(b) Block ice facilities.

(1) (No change.)

(2) Ice storage vaults. Ice storage vaults must be kept under sanitary conditions and shall be maintained in such a condition as to prevent possible flooding of rooms with waste material. All vaults shall be provided with suitable drains. To prevent possible contamination of ice, all accumulations of rust, fungus growth, mold[;] or slime shall be controlled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600297

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 458-7236



## CHAPTER 265. GENERAL SANITATION

### SUBCHAPTER B. TEXAS YOUTH CAMPS

#### SAFETY AND HEALTH

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§265.11 and 265.13 - 265.27, and new §§265.11 and 265.13 - 265.29, concerning the health and safety of Texas youth camps.

#### BACKGROUND AND PURPOSE

The repeal and new sections are necessary to accommodate needed revisions as outlined. Health and Safety Code (HSC), §§141.002(2), 141.002(5), and 141.005(a), redefined "day camp" and "youth camp", and changed the renewal date for licenses.

HSC, §141.0021, exempted a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education; HSC, §§141.0035, 141.004(a), and 141.005(b), eliminated statutory license fees and required the Texas Board of Health (board) to establish the amount of the fee for obtaining or renewing a license, and required the board to solicit comments and information from the operators of affected youth camps; HSC, §§141.007(d), (e), (f), and (g); 141.008(a); 141.010; and 141.016(c), changed inspection procedures for infractions found during inspections which are easily corrected, reestablished the Youth Camp Advisory Committee, and changed the administrative penalty.

HSC, §141.0096, established the Youth Camp Training Advisory Committee.

Government Code, Chapter 2054, Subchapter K, requires the department to participate in an electronic system for licensing transactions (Texas Online) and to establish fees for licensees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.11 and 265.13 - 265.27 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

#### SECTION-BY-SECTION SUMMARY

New §265.11 updates the definitions used in the chapter, including more clearly defining the types of camps and the general characteristics of a youth camp. Sections 265.13 and 265.14 more clearly define the physical facilities required of a youth camp, updated to reflect current state statutes and accepted national standards. The requirement to report to the department incidents of camper neglect or abuse, or the death, serious injury or serious illness of a camper has been strengthened and clarified in §265.15. Sections 265.15 and 265.16 update requirements for waterfront activities and potentially hazardous camp activities, adding sections dealing with horseback riding programs and adventure/challenge courses. Sections 265.17 - 265.21 deal with Fire Prevention, Motor Vehicles, Farm and Domestic Animals, and Insect and Rodent Control respectively. Sections 265.23 and 265.24 provide the procedures for obtaining a youth camp license. Section 265.25 outlines procedures for inspections, including changing inspection procedures for infractions found during inspections which are easily corrected. Civil penalties and injunctions are outlined in §265.26. Section 265.27 deals with revocation of a license, administrative penalties, and hearing procedures. This section also includes an enforcement matrix establishing a severity level for deficiencies identified by the department. The assignment of a severity level, ranked as Severity Level I, II, or III, is based upon determination of risk to the camper of injury. Section 265.28 deals with licensing fees. Membership requirements and responsibilities of the Youth Camp Advisory Committee and the Youth Camp Training Advisory Committee are explained in §265.29.

#### FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This determination was made by an interpretation of the rules that small businesses and micro-businesses will probably not be required to alter their business practices significantly, since these rules reflect current camping business practices and insurance requirements. There is no anticipated increase in economic costs to individuals employed by a youth camp. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections would be increased protection for campers and staff against disease transmission, accidents, and injuries.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2305, or by email to Michael.Minoia@dshs.state.tx.us. Comments will be accepted if received within 30 days following publication of the proposal in the *Texas Register*.

## PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled to be held during the official 30-day comment period at the Department of State Health Services, Room K-100, 1100 West 49th Street, Austin, Texas 78756. The hearing will be held from 9:00 a.m. to 12:00 p.m. on February 10, 2006. For information, please contact Michael J. Minoia at (512) 834-6770, extension 2305.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

### 25 TAC §§265.11, 265.13 - 265.27

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

## STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §141.008, which authorizes the department to adopt rules; Government Code, Chapter 2054, that requires the department to participate in an electronic system for licensing

transactions (Texas Online) and to establish fees for licensees; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapters 141, and 1001; Government Code, Chapter 531; and implement Government Code, §2001.039.

§265.11. *Definitions.*

§265.13. *Site and Physical Facilities.*

§265.14. *Primitive or Wilderness Camp.*

§265.15. *Medical and Nursing Care.*

§265.16. *Waterfront Safety.*

§265.17. *Recreational Safety and Equipment.*

§265.18. *Fire Prevention.*

§265.19. *Maintenance and Safe Use of Motor Vehicles.*

§265.20. *Farm and Domestic Animals.*

§265.21. *Insect and Rodent Control.*

§265.22. *Variance.*

§265.23. *Time Periods for Processing Applications for Youth Camp Licenses.*

§265.24. *Renewal and Nonrenewal of Licenses.*

§265.25. *Administrative Penalties.*

§265.26. *Nudity Prohibited.*

§265.27. *Fees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600342

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 458-7111 x6972



### 25 TAC §§265.11, 265.13 - 265.29

## STATUTORY AUTHORITY

The proposed new sections are authorized by Health and Safety Code, §141.008, which authorizes the department to adopt rules; Government Code, Chapter 2054, that requires the department to participate in an electronic system for licensing transactions (Texas Online) and to establish fees for licensees; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new sections affect the Health and Safety Code, Chapters 141, and 1001; Government Code, Chapter 531; and implement Government Code, §2001.039.

§265.11. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the content clearly indicates otherwise.

(1) Act--Texas Youth Camp Safety and Health Act, Health and Safety Code, Chapter 141.

(2) Adult--A person 18 years of age or older.

(3) Camper--A minor child, under 18, who is attending a youth camp on either a day or boarding basis.

(4) Commissioner--The Commissioner of the Department of State Health Services.

(5) Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule must be structured so that each camper attends for more than four hours per day for four consecutive days. The term does not include a facility that is required to be licensed with the Department of Family and Protective Services (formerly the Department of Protective and Regulatory Services).

(6) Department--Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199.

(7) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(8) Firearm--Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or a burning substance, or any device readily convertible to that use.

(9) Hazardous activity--A camp activity such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations.

(10) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes, but is not limited to, air guns, air rifles, BB guns, and paintball guns.

(11) Permanent structure--Man-made buildings such as dining halls, dormitories, cabins, or other buildings that are constructed to remain stationary.

(12) Person--An individual, partnership, corporation, association, or organization. In these rules, a person does not include a government or governmental subdivision.

(13) Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(14) Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(15) Supervisor/counselor--Camp personnel or youth group leader, 18 years of age or older, who is responsible for the immediate supervision of campers.

(16) Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(17) TCEQ--Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, telephone 512-239-1000.

(18) Waterfront--A natural, or artificial body of water that includes, but is not limited to, a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(19) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes, but is not limited to, swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(20) Youth camp--A facility or property, other than a facility required to be licensed by the Department of Family and Protective Services that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used for recreational, athletic, religious, or educational activities;

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four consecutive days; and

(D) is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(21) Youth camp, general characteristics of:

(A) a youth camp provides supervision, instruction, and recreation, utilizing a variety of activities primarily in an outdoor, natural environment, for children who are apart from their parents or legal guardians;

(B) a youth camp operates during school vacation periods, and not more than 120 days per calendar year; and

(C) a youth camp accepts a camper for a minimum of four consecutive days for more than four hours per day.

(22) Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

§265.13. Site and Physical Facilities.

(a) Safety of the location. The location of a camp shall not present a fire, health, or safety hazard.

(b) Accumulation of refuse and debris. The premises of each camp shall be kept free of accumulations of refuse and debris.

(c) Compliance with building, plumbing, electrical and life safety codes. All camp buildings shall comply with applicable building, plumbing, electrical, life safety, and similar codes.

(d) Permanent living or sleeping structures. All permanent structures used for living or sleeping purposes in the camp shall be provided with walls, floors, and ceilings that shall be kept clean and in good repair.

(e) Separate beds, bunks or cots. A separate bed, bunk, or cot shall be required for each person. Beds shall be spaced in a manner that is free of obstruction for entering and exiting.

(f) Bunk bed guardrails. In all rooms housing campers, all bunk beds shall have at least two guardrails, one on each side of the bed for each bed having the underside of its foundation more than 30

inches from the floor in accordance with the Code of Federal Regulations (CFR), 16 CFR, Part 1513.3. Bunk beds securely attached to a wall may utilize the wall as one guardrail.

(g) Location of sleeping quarters. Sleeping shall not be permitted in kitchens or in rooms used for food preparation, storage, or service.

(h) Bedding provided by the camp. All articles of bedding provided by the camp, including mattresses and mattress covers, shall be kept clean and in good repair. Any bedroll provided by the camp and used by campers must be properly cleaned between use by different individuals.

(i) Toilets and urinals. The camp shall provide at least one toilet for every 15 females and one toilet for every 15 males. In each male toilet facility, up to 70% of the toilets required may be urinals. In facilities with more than one toilet, some means of privacy must be provided for each toilet.

(j) Lavatories. The camp shall provide at least one lavatory adjacent to toilet facilities. In facilities with more than five toilets or urinals in a room, there must be a minimum of two lavatories.

(k) Hand cleanser required. Each lavatory must be equipped with one of the following methods to sanitize hands:

(1) lavatories with hot and cold running water must have soap or hand cleanser available at all times;

(2) lavatories with only cold running water must have hand sanitizer or anti-bacterial soap available at all times; or

(3) privies and portable toilet facilities not equipped with lavatories providing water must have waterless hand sanitizer available at all times.

(l) Shower facilities. Resident youth camps must provide at least one shower for every 15 females and one shower for every 15 males. Each shower shall be equipped with water to meet the needs of the campers. There shall be soap or body cleanser available at all times.

(m) Cleanliness and sanitation of toilets, lavatories and bathing facilities. All toilets, lavatories, and bathing facilities shall be maintained in good repair and kept clean at all times. Every shower room floor shall be washed daily with a suitable detergent or sanitizing agent.

(n) Construction of privies. Privies, if provided, shall be constructed according to standards set forth in the Texas Community Sanitation Handbook, which may be obtained from the department by calling the Environmental Health Group, Policy, Standards and Quality Assurance Unit at 512-834-6770. Privies shall be maintained in a manner to prevent access by flies and animals, to prevent fly breeding, and to prevent contamination of any water supply.

(o) Availability of toilet tissue. Toilet tissue shall be available at all times for each toilet or privy seat.

(p) Lighting and ventilation in toilet and bathing facilities. All permanent toilets and bathing structures shall be adequately ventilated and properly lighted.

(q) Potable water supply required. Camps shall ensure that all water used for ingestion comes from a TCEQ approved potable water source that meets all applicable standards of 30 Texas Administrative Code (TAC), Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, as amended.

(r) Private water wells at youth camps. Camps utilizing a private well system for water must have written confirmation from the

TCEQ that the water quality meets 30 TAC, Chapter 290, Public Drinking Water, Subchapter F, Drinking Water Standards Governing Drinking Water Quality And Reporting Requirements For Public Water Systems, as amended. The written confirmation must be given to a department representative upon request.

(s) Disposal of youth camp wastewater. All camp wastewater must be disposed of into a community sanitary sewage system or an approved On-site Sewage Facility in accordance with 30 TAC, Chapter 285, On-Site Sewage Facilities. In remote areas, the use of chemical toilets or pit privies is allowed, if the facilities are built and maintained in accordance with manufacturer designs or the Texas Community Sanitation Handbook.

(t) Disposal of solid waste. Solid wastes shall be disposed of at a TCEQ approved sanitary landfill or other disposal facility approved by TCEQ under 30 TAC, Chapter 330, Municipal Solid Waste.

(u) Permanent food preparation, storage and service areas. Permanent food preparation, storage and service areas must be maintained in compliance with 25 TAC, Chapter 229, Subchapter K, §229.161 et seq., Texas Food Establishments, as amended. Items inspected may include, but are not limited to:

- (1) proper cooling for cooked/prepared food;
- (2) proper cooking temperatures;
- (3) proper/adequate hand washing and good hygienic practices;
- (4) approved source/labeling;
- (5) proper handling of ready-to-eat foods;
- (6) cross-contamination of raw/cooked foods/other;
- (7) approved systems (Hazard Analysis and Critical Control Points (HACCP) plans/time as public health control);
- (8) hot and cold water under pressure;
- (9) hand wash facilities adequate, accessible, and with soap and towels;
- (10) evidence of insect contamination;
- (11) toxic items properly labeled/stored/used;
- (12) manual or mechanical ware washing and sanitizing;
- (13) food contact surfaces of equipment and utensils cleaned/sanitized/good repair; and
- (14) consumer advisories posted (Heimlich, raw shellfish warning, buffet plate).

§265.14. Primitive or Wilderness Camp.

(a) Maintenance and operation of primitive campsites. Primitive campsites shall be maintained and operated in a safe and healthful manner.

(b) Drinking water at primitive camp, on hikes, or on trips away. Drinking water used at primitive camps and on hikes and trips away from permanent campsites shall be from a source known to be safe or shall be rendered safe.

(c) Toilet facilities at primitive campsites. Primitive campsites that are not provided with approved toilet facilities shall have a separate toilet area designated for each sex. Slit trenches or cat holes with a readily available supply of clean earth backfill or other disposal methods approved by the department's Policy, Standards, and Quality Assurance Unit, shall be utilized for the disposal of human excreta in these areas. Approval must be received in writing prior to implementation.

Toilet areas shall be located at least 150 feet from a stream, lake, or well, and at least 75 feet from a campsite, tent, or other sleeping or housing facility.

(d) Disposal of solid wastes at primitive campsites. Solid wastes that are generated in primitive camps shall be disposed of at a TCEQ approved sanitary landfill or other disposal facility approved by TCEQ under 30 TAC, Chapter 330, Municipal Solid Waste.

(e) Food service at primitive campsites. Only foods that can be maintained in a wholesome condition with the equipment available shall be used at primitive camps.

(f) Use of hot water and detergent to wash food utensils. Hot water and detergent shall be used to wash all food utensils after each meal at primitive campsites.

(g) Supervision of campers at primitive camps. Campers utilizing primitive camps shall be adequately supervised at all times by a responsible adult who is knowledgeable concerning proper wilderness camping techniques. A minimum of one such supervising adult for each ten campers shall be maintained in the immediate vicinity (within sight and/or hearing) of the campers.

#### §265.15. Medical and Nursing Care.

(a) Record of an on-call physician required. Documentation shall be kept on file of a physician licensed to practice in Texas who is available to be on call at all times to advise health service personnel on all first aid and nursing services provided by the camp.

(b) Emergency transportation. Transportation must be available at all times to transport any sick or injured camper in an emergency.

(c) Medical staffing requirements. A physician, registered nurse, licensed vocational nurse, or a person with an American Red Cross Emergency Response certificate, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer. For camps having documented evidence, such as a letter from the local emergency medical services (EMS), that the camp is located within a 20 minute community EMS response time, a person certified in American Red Cross Community First Aid and Safety, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer.

(d) Requirement to report incidents of abuse or neglect of a minor. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Texas Family Code, Chapter 261, then that person shall immediately make a report, in accordance with Family Code, §261.101(a) to the department's Policy, Standards and Quality Assurance Unit, as required by §261.103(a)(3). The report can be made by telephone (512-834-6770), by fax (512-834-6707), or by email (the current email address may be found at [www.tdh.state.tx.us/beh/gs/youth.htm](http://www.tdh.state.tx.us/beh/gs/youth.htm)). A report must be made to the department and may be made to a local or state law enforcement agency or other agency listed in Family Code, §261.103.

(e) Requirement to report camper death or communicable diseases. Camper death or confirmed cases of waterborne or foodborne diseases, such as cholera, dysentery, typhoid, salmonellosis, shigellosis, or infectious hepatitis, shall be reported to the department's Policy, Standards, and Quality Assurance Unit, within 24 hours of occurrence (or confirmation in the case of disease) by fax (512-834-6707), or by email at the address found at [www.tdh.state.tx.us/beh/gs/youth.htm](http://www.tdh.state.tx.us/beh/gs/youth.htm).

(f) Designation of a first aid area. A first aid area, used exclusively to handle health and emergency cases, shall be designated and suitably equipped.

(g) Isolation of a child with a communicable disease. A child ill with a confirmed or suspected case of a communicable disease shall be isolated to provide safety to other children and quiet to the patient. Any child that is isolated shall be supervised as determined by the Camp Health Officer.

(h) Bound medical log required. A bound medical log, or other unalterable record keeping system, listing date, name of the patient, ailment, name of the Camp Health Officer, and the treatment prescribed shall be kept in the first aid area for the duration of the camp year for which the license is issued.

(i) Camper health records shall be kept on file. The first aid area shall keep a health record on each child with the child's name, allergies, immunizations, parent's name, address, and telephone number, and parent or guardian authorization for emergency medical care.

(j) Availability of an emergency telephone. The camp shall have a telephone readily available, preferably in the first aid area, for emergency use.

(k) Emergency plans required. A written plan of procedures to be implemented in case of a disaster, serious accident, epidemic, or fatality shall be formulated and posted in the camp's administrative on-site office or location. All camp staff and volunteers must be made aware of this plan during the staff-training program or volunteer briefing. Documentation of this training must be kept at the camp's administrative on-site office or location.

(l) Storing and dispensing prescription medication to campers. If a child is taking a prescription medication when he or she reports to camp, the medication must be in the original container with the prescription label, and the medical staff shall place that medication in a lockable cabinet or other secure location that is not accessible to campers. The medication shall be administered by the Camp Health Officer or camp counselor, if authorized in writing by the Camp Health Officer. At no time will the child be allowed to self-administer the medication without adult supervision.

(m) Camp trip first aid kits. First aid kits shall be taken on all out-of-camp trips.

#### §265.16. Waterfront Safety.

(a) Adult waterfront director required at youth camps. An adult waterfront director, who holds a current lifeguard certificate or its equivalent, shall be in charge of all waterfront activities. While waterfront activities are in progress, the waterfront director or an adult certified lifeguard assistant shall be in the immediate vicinity (within sight and/or hearing) of the campers, supervising the program.

(b) Responsibilities of the waterfront director. The waterfront director is to be responsible for all waterfront supervision procedures and is responsible for ensuring that the waterfront procedures are strictly enforced. The waterfront staff shall not engage in personal recreational swimming, boating or any other waterfront activity while on waterfront duty. For every 35 campers, or fraction thereof, engaged in waterfront activities, there shall be one certified lifeguard and one additional person (either a certified lifeguard or trained adult lookout) on duty. Camps utilizing natural bodies of water such as rivers, lakes, or creeks may need to increase this ratio.

(c) Maintenance and operation of swimming areas. Swimming areas shall be maintained and operated in a safe and clean condition. Youth camp swimming pools are class C pools, and must be built, operated, and maintained in accordance with 25 TAC, Chapter 265, General Sanitation, Subchapter L, Standards for Public Pools and Spas.



(d) Camper's swimming ability must be determined. Camps shall test to determine each child's swimming ability. Children shall then be confined to the limits of swimming skills for which they have been classified. Also, the swimming area shall have areas for non-swimmers, intermediates, and swimmers clearly marked.

(e) Checking bathers in and out of the water. A method of checking bathers in and out of the water shall be established and enforced.

(f) Waterfront lifesaving equipment shall be provided. Life-saving equipment suitable for the waterfront activity shall be provided at the waterfront activity area and placed so the equipment is immediately available in case of an emergency.

(g) Providing a personal flotation device. A Coast Guard approved Personal Flotation Device (PFD) shall be readily available for each occupant of a watercraft. Each occupant of a watercraft 12 years of age and under shall wear a United States Coast Guard (USCG) approved inherently buoyant Type II PFD, or Near-Shore Buoyancy Vest at all times while in the watercraft. A non-swimmer shall wear a USCG approved inherently buoyant Type II PFD, or Near-Shore Buoyancy Vest and not be permitted in a watercraft unless accompanied by a counselor. A camper shall wear a vest type USCG approved preserver before entering and while in white water or before entering and while on a lake when the water is rough or while waterskiing.

(h) Location of swimming areas. Swimming areas shall be used exclusively for swimming while swimming is occurring. A watercraft docking area shall not be allowed in the swimming area and waterskiers shall not launch, cross, or stop in the swimming area while swimming is occurring.

#### §265.17. Program Safety and Equipment.

(a) Firearm or pellet gun programs at youth camps. A firearm or pellet gun program shall be conducted on a range that meets or exceeds the specifications outlined by the National Rifle Association or its equivalent. Safety procedures shall be enforced whenever the range is in use. The range shall be conspicuously marked and configured to prevent entry of campers onto the range while it is in use.

(b) Archery program at youth camps. An archery program shall be conducted on a range that meets or exceeds the specifications outlined by the National Field Archery Association or its equivalent. The archery range shall be conspicuously marked and configured to prevent entry of campers onto the range while it is in use.

(c) Program equipment condition and use. Equipment used in all programs shall be kept in good condition and present no hazard as a result of poor condition to the user at any time.

(d) Storage of firearms, pellet guns, and archery equipment when not in use. Firearms, pellet guns, ammunition, and archery equipment shall be kept in a secured area when not in use.

(e) Safety and maintenance of tools used by campers. All tools, including power tools, used by campers shall be maintained in good repair, shall have the necessary safety guard attached, and shall be used only under supervision.

(f) Horseback riding programs. Camps providing horseback riding programs shall require the head instructor or director of the program to follow the camp's riding program and safety procedures outlined in a written document. This document shall include the following:

- (1) procedures to be followed in the event of an accident;
- (2) procedures to determine each horse's suitability for safe use;
- (3) proper care of tack and equipment;

(4) proper procedure for mounting;

(5) the number of riders per supervisor, and

(6) any other information that is specific to the camp's equestrian program or is helpful to the horseback riding director.

(g) Record keeping and care of horses. Camps providing horseback riding programs shall:

(1) ensure that horses that are in use are sound and in good physical condition;

(2) ensure that the stable area is kept clean and free of all hazards; and

(3) require all riders (campers and instructional staff) to wear hardhats.

(h) Adventure/challenge courses. Camps providing an adventure/challenge program utilizing belaying, spotting, or non-spotting elements must:

(1) designate a certified adventure/challenge program manager, who shall be in attendance whenever the adventure/challenge program is operating;

(2) ensure that the adventure/challenge program is operated and maintained in a safe manner;

(3) develop a set of site-specific policies and procedures, which establish criteria for all adventure/challenge operations, including equipment used and safety precautions;

(4) ensure that spotters and belayers are instructed in the proper procedures prior to assuming their duties, and that they are directly supervised until competency is demonstrated;

(5) establish a method to control access to the equipment and the activity area in order to prevent use by unauthorized or unsupervised campers;

(6) perform safety checks of all equipment and ropes prior to each use and maintain a record of all inspections and maintenance;

(7) provide a safety orientation for each camper prior to allowing the camper to engage in adventure/challenge activities;

(8) ensure that all campers engaged in adventure/challenge activities are wearing appropriate personal protective equipment; and

(9) provide documentation of an annual physical inspection of the adventure/challenge course and equipment by an insured third party inspector.

#### §265.18. Fire Prevention.

(a) Fire and safety codes. Facilities at all youth camps shall meet local fire and safety codes.

(b) Fire exits in buildings. All buildings in which groups of people live, eat, sleep, or assemble shall be provided with ready exits for use in case of fire and these exits shall be conspicuously marked.

(c) Disaster and evacuation procedures. All youth camps that provide permanent or semi-permanent structures for group living, eating, sleeping, or assembly shall have disaster and evacuation procedures outlined in writing. These procedures shall be reviewed by the staff with specific assignments made to each staff member and counselor. All campers shall be instructed as to their actions in the event of fire, disaster, or the need to evacuate.

(d) Storage of flammable or explosive materials. Containers of gasoline, flammables, or explosives shall be plainly marked and stored in a locked area separate and apart from any and all permanent and

semi-permanent structures used by campers. The presence of such materials shall be kept to a minimum.

§265.19. Maintenance and Safe Use of Motor Vehicles.

(a) Inspection of vehicles used for transportation of campers. Any vehicle used for transporting children on public roadways must have all current and applicable Department of Public Safety vehicle inspections.

(b) First aid kits in vehicles transporting campers or staff. Every vehicle used for transporting staff or campers off site shall be equipped with a first aid kit and emergency equipment such as fire extinguishers, tools, and flares.

(c) Drivers shall have a valid driver's license. All drivers must be adults and hold a valid driver's license appropriate for the type of vehicle being driven.

§265.20. Farm and Domestic Animals.

(a) Location of animals. Horses and other animals maintained at any camp shall be quartered at a reasonable distance from any sleeping, living, eating, or food preparation area.

(b) Location of stables or corrals. Stables and corrals shall be located so as to prevent contamination of any water supply. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

(c) Animals in waterfront areas prohibited. Horses, dogs, or other domestic animals or pets shall not be permitted on a bathing beach or in the water near the beach when in use for waterfront activities.

(d) Rabies vaccinations of animals. All dogs and cats owned or under the supervision of anyone on the camp premises shall be currently vaccinated against rabies in compliance with Health and Safety Code, §826.021. Evidence of vaccination must be provided to a department representative upon request.

§265.21. Insect and Rodent Control.

(a) Prevention of insect, rodent or other pest infestations. The camp management shall maintain every building used or intended for human habitation in a manner to keep it free from insects, rodents, and other pests.

(b) Storage of chemical control agents. Chemical control agents, insecticides, rodenticides, and other hazardous chemicals shall have the containers plainly marked and be stored in a locked area not accessible to campers. The presence of such chemicals shall be kept to a minimum.

§265.22. Nudity Prohibited.

A youth camp may not allow campers or staff to be nude except when bathing, showering, changing clothing, or receiving medical care.

§265.23. Application for a New License.

(a) License required. A person must possess a valid youth camp license prior to operating a youth camp. An application is made by submitting a completed youth camp application and paying the license fee. A blank application may be obtained by calling the Professional Licensing and Certification Unit at 512-834-6770, or may be downloaded from the website at [www.tdh.state.tx.us/beh/gs/youth.htm](http://www.tdh.state.tx.us/beh/gs/youth.htm). All applications may be mailed to the Professional Licensing and Certification Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(b) Processing applications. All applications will be processed promptly after the completed application form and fees are received.

Those who submit incomplete applications will be notified either by telephone or in writing as soon as possible.

(c) Qualifying for a youth camp license. The department shall determine if the facility meets the definition of a Youth Camp as described in §265.11(20) of this title (relating to Definitions) and the definition of "Youth camp, general characteristics of:" in §265.11(21) of this title. If the facility does not qualify for a license, the application will be denied and the license fee, less a handling fee of \$50, refunded. If an application is denied because the facility does not meet the definition of a youth camp, the applicant should determine if a license from another agency is required.

§265.24. Application for a Renewal License.

(a) Renewal of a youth camp license. A person holding a license under the Act must renew the license annually from the date of issuance.

(b) Renewal notice. At least 30 days before a license expires the department, as a service to the licensee, shall send a renewal notice to the licensee or registrant, by first-class mail to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of their current address and to take action to renew their certificate whether or not they have received the notification from the department. The renewal notice will state:

- (1) the type of license requiring renewal;
- (2) the time period allowed for renewal; and
- (3) the amount of the renewal fee.

(c) Renewal requirements. All renewal applications and fees shall be submitted to the department prior to the license's annual expiration date and shall be mailed to the Professional Licensing and Certification Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. The department will renew the license if the applicant meets the standards in these sections, meets the definition of a "Youth camp" as described in §265.11(20) of this title (relating to Definitions) and the definition of "Youth camp, general characteristics of:" in §265.11(21) of this title, submits a complete renewal application on the prescribed form along with all required documentation, pays the required fee, and has complied with all final orders resulting from any violations of these sections.

(d) Non-renewal. The department may decide not to renew a license unless the applicant has complied with all final orders resulting from any violations of these sections.

(e) Opportunity for a hearing. When the department proposes to deny an initial or renewal application, it will give notice of the proposed action in writing and will provide information on how to request an administrative hearing. The applicant must make a written request for a hearing within 30 days from the date on the notice letter sent by the department.

§265.25. Inspections.

(a) Inspections and corrections. An employee or agent of the department may enter any property for which a license is issued in accordance with the Act, property for which a license application to operate a youth camp is pending, or property on which a youth camp is operating without a license to investigate and inspect conditions relating to the health and safety of the campers. An employee or agent of the department who enters a youth camp to investigate and inspect conditions shall:

- (1) notify the person in charge of the camp of the inspector's presence and shall present proper credentials;

(2) notify the person in charge of the camp or the person's designee of any violations as they are discovered; and

(3) allow the camp to correct the violations while the investigation and inspection is occurring.

(b) Investigation or inspection may not be delayed. An employee or agent of the department may not extend or delay an investigation or inspection in order to allow the youth camp to correct a violation noted during the investigation or inspection.

(c) Interference with an inspection. A department representative in pursuance of his/her official duties is not required to seek permission to conduct inspections or investigations. It is a violation of the Act for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative.

§265.26. Civil Penalties and Injunctions.

(a) A person violating the Act or a rule or order adopted under the Act is subject to a civil penalty of not less than \$50 or more than \$1,000 for each act of violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate the Act or a rule or order adopted under the Act, the department may bring a civil action in a district court for injunctive relief, a civil penalty, or both.

(c) The district court, upon finding that the person is violating the Act, or a rule or order adopted under the Act, shall grant injunctive relief, assess a civil penalty, or both, as warranted by the facts.

(d) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that a person is:

(1) violating or threatening to violate the Act or a rule or order adopted under the Act; or

(2) taking any other action that creates an emergency condition that constitutes an imminent danger to the health, safety, or welfare of campers, staff or visitors at a youth camp.

(e) An action under this section may be brought in the county in which the defendant resides or in which the violation or threat of violation occurs.

(f) If an action for injunctive relief under this section is granted by the court, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(g) An appellate court shall give precedence to an action brought under this section over other cases of a different nature on the docket of the court.

§265.27. Revocation, Administrative Penalties, and Hearings.

(a) License revocation.

(1) If the department finds that a violation of the Act or of a rule has occurred or is occurring at a youth camp for which a license has been issued, the department shall give written notice to the licensee setting forth the nature of the violation and demanding that the violation cease.

(2) The department may initiate proceedings to revoke the license if the licensee fails to comply with the notice to cease in the time and manner directed in the notice.

(b) Assessment of an administrative penalty. The Commissioner may assess an administrative penalty if a person violates the Act,

a rule of the department, or an order of the commissioner issued under the Act or rules.

(c) Determination of the penalty amount. In determining the amount of the penalty, the commissioner shall consider:

(1) previous compliance history;

(2) the seriousness of the violation;

(3) any hazard to public health and safety;

(4) the person's demonstrated good faith; and

(5) any other matters as justice may require.

(d) Administrative penalty limits. The administrative penalty may not exceed \$1,000 a day for each violation. Each day a violation continues may be considered a separate violation.

(e) Opportunity for a hearing. Prior to revoking a license or assessing an administrative penalty, the department shall give the person charged an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, and the department's fair hearing procedures in 25 TAC, §1.41, et seq.

(f) Violation severity levels. Violations shall be categorized into severity levels I, II, and III. Administrative penalties may be imposed for:

(1) Critical violations. Severity level I violations have or could have a direct or immediate negative effect on the health, safety, and welfare of campers or the operation and management of a youth camp. These violations are assessed at \$750 - \$1,000 per violation per day. Examples of severity level I violations include, but are not limited to:

(A) operating a youth camp without a current license;

(B) failing to report an incident of camper abuse or neglect of a camper as required;

(C) providing drinking water from an unapproved source;

(D) policies or procedures not being followed in a way that has a direct negative impact on camper health or safety;

(E) unqualified or insufficient number of personnel staffing operations or activities;

(F) criminal conviction and sex offender records not on file;

(G) sexual abuse training and exam records not on file; and

(H) interfering with, denying, or delaying an inspection or investigation conducted by a department representative.

(2) Serious violations. Severity level II violations are those that could threaten the health, safety, and welfare of campers or the operation and management of a youth camp. These violations are assessed at \$500 - \$750 per violation per day. Examples of severity level II violations include, but are not limited to:

(A) written personnel practices and policies regarding camp and staff are not available as required;

(B) staff members not informed regarding personnel and camp practice policies;

(C) proper sanitation of all food utensils not achieved;

(D) policies or procedures not being followed in a way that could threaten the health, safety, and welfare of campers or the operation and management of a youth camp;

(E) swimming areas not maintained in clean condition;  
or

(F) disaster and/or fire evacuation procedures are not posted properly.

(3) Significant violations. Severity level III violations are those of concern that if left uncorrected could lead to more serious circumstances. These violations are assessed at \$250 - \$500 per violation per day. Examples of severity level III violations include, but are not limited to:

(A) toilets and bathing facilities not adequately lighted and ventilated;

(B) docking and waterskiing permitted in the swimming area;

(C) vehicles used to transport staff or campers not equipped with a first aid kit;

(D) policies or procedures not being followed in a way that if left uncorrected could lead to more serious circumstances; and

(E) unauthorized nudity allowed.

§265.28. Fees.

(a) The schedule of annual fees is as follows:

(1) initial license day youth camp--\$250;

(2) initial license residential youth camp--\$750;

(3) renewal license day youth camps operating less than 10 days per year--\$50;

(4) renewal license day youth camps operating 10 or more days per year--\$150;

(5) renewal license residential youth camps operating less than 10 days per year--\$100; and

(6) renewal license residential youth camps operating 10 or more days per year--\$450.

(b) Applicants may submit applications and renewal applications for a license under these sections electronically by the Internet through Texas Online at [www.texasonline.state.tx.us](http://www.texasonline.state.tx.us). The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(c) A current license shall only be issued when all past due fees and late fees are paid.

(d) All fees are non-refundable, except as specifically noted in these rules.

(e) All fees shall be submitted in the form of personal checks, certified checks, money orders, or checks from state agencies, municipalities, counties, or other political subdivisions of the state made payable to the department.

§265.29. Youth Camp Committees.

(a) Advisory committee.

(1) Committee appointment. The executive commissioner or his designee shall appoint a committee to:

(A) advise the executive commissioner in the development of standards and procedures;

(B) make recommendations to the executive commissioner regarding the content of the rules adopted to implement the Act; and

(C) perform any other functions requested by the executive commissioner in the implementation and administration of the Act.

(2) Advisory committee membership. The advisory committee shall not exceed nine members. At least two members shall be from the general public, and seven members shall be experienced camping professionals who represent the camping communities of the state and should reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

(3) Filling a vacancy on the advisory committee. Any vacancy on the advisory committee will be filled by the executive commissioner or his designee in the same manner as other appointments to the advisory committee.

(4) Annual meeting required. The advisory committee will meet annually and at the call of the executive commissioner or his designee.

(b) Training advisory committee.

(1) Training advisory committee appointment. The commissioner or his designee shall appoint a training advisory committee to advise the department and the executive commissioner in the development of criteria and guidelines for the training and examination.

(2) Training advisory committee membership. The training advisory committee consists of not more than nine members including at least two members who represent the general public; and other members, who include experienced camping professionals representing the camping communities of this state, representatives of youth camps selected by the department, and representatives of the Council on Sex Offender Treatment established under Occupations Code, Chapter 110.

(3) Filling a vacancy on the training advisory committee. Any vacancy on the training advisory committee will be filled by the department in the same manner as other appointments to the training advisory committee.

(4) Meetings. The advisory committee shall meet at the call of the commissioner.

(c) Both committees.

(1) Staggered terms of service. Committee members shall serve for staggered six-year terms, with the terms of three members expiring on August 31 of each odd-numbered year.

(2) Adoption of committee rules of conduct and election of officers. The committee may adopt rules for the conduct of its own activities and may elect from among its members a chairperson, a vice-chairperson, and a secretary.

(3) Committee quorum. A simple majority of the members of the committee who are statutorily required to be appointed shall constitute a quorum for the purpose of transacting official business.

(4) Committee meetings announced. The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Texas Government Code, Open Meetings Act, Chapter 551.

(5) Compensation or reimbursement of expenses. A committee member may not receive compensation or reimbursement of expenses for serving on a youth camp committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600343

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §265.12 and new §265.12, concerning sexual abuse training program and criminal background checks at Texas youth camps.

### BACKGROUND AND PURPOSE

The repeal is necessitated by numerous changes made to this section. The repeal and new section are needed to comply with changes necessitated by Health and Safety Code (HSC), §141.0095, which established the criteria and guidelines for training and examination programs on sexual abuse and child molestation, and changes necessitated by HSC, §141.009(15), which authorized establishing standards relating to records of criminal convictions of camp personnel.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 265.12 has been reviewed and the department has determined that reasons for adopting this section continue to exist because a rule on this subject is needed.

### SECTION-BY-SECTION SUMMARY

New §265.12 updates the requirements for directors, supervisors, and staff, including documentation of criminal convictions, sex offender registration record requirements, clarification of experience needed to supervise hazardous camp activities, and attendance at a sexual abuse and child molestation training and examination program for all staff and volunteers in positions involving contact with campers at a youth camp to be effective by June 1, 2006.

### FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be fiscal implications to state governments as a result of enforcing and administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$25,000 in FY 2006 and \$2,500 in FY 2007 through 2010.

These additional revenues will offset the costs associated with administering and enforcing these sections. Implementation of the proposed sections will not result in any fiscal implications for local governments.

### SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be a fee of \$125 to any trainers under contract with youth camps or by online training organizations applying for approval of a training and examination program on sexual abuse and child molestation. This amount is necessary to cover the administrative cost to the department of approving the training programs. The actual cost of the training program to each youth camp cannot be determined, since one trainer may perform training at more than one camp, thus reducing the cost to each camp. Should a full criminal background check be required to be obtained for a youth camp staff member or a youth camp staff member applicant, there will be an anticipated cost increase to all businesses. When comparing the cost of obtaining a single full criminal background report for micro and small business to the cost of obtaining a single full criminal background report for the larger businesses, the cost will be the same. The business that must obtain more full criminal background reports will be faced with a cost increase. A full criminal background report will be required, if a staff member, or an individual seeking employment as a staff member is, through a screening process, determined to have some type of criminal background. The cost of performing criminal background checks varies according to the type required and can range from \$10 to \$50 per individual background check. The proposed new rule, including the training and examination program, criminal background checks, and sex offender database screenings, was discussed and agreed to in advisory committee meetings with youth camp industry representatives, with individuals representing individual youth camps, and with members of the public. The anticipated cost to persons would be in the cost of the background check and sex offender database screening discussed above. There is no anticipated negative impact on local employment.

### PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections would be increased protection from potential sexual abuse or child molestation at youth camps.

### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2305, or by email to Michael.Minoia@dshs.state.tx.us. Comments will be accepted if received within 30 days following publication of the proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled to be held during the official 30-day comment period at the Department of State Health Services, Room K-100, 1100 West 49th Street, Austin, Texas 78756. The hearing will be held from 9:00 a.m. to 12:00 p.m. on February 10, 2006. For information, please contact Michael J. Minoia at (512) 834-6770, extension 2305.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### 25 TAC §265.12

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The proposed repeal is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees designed to recover all direct and indirect costs of licensing programs; Health and Safety Code, §141.009(15), which authorizes establishing standards relating to records of criminal convictions of camp personnel; Health and Safety Code, §141.0095, which establishes a training and examination program on sexual abuse and child molestation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects the Health and Safety Code, Chapters 12, 141, and 1001; Government Code, Chapter 531; and implements Government Code, §2001.039.

#### §265.12. *Directors, Supervisors, and Staff.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600340

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 458-7111 x6972



#### 25 TAC §265.12

#### STATUTORY AUTHORITY

The proposed new section is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees designed to recover all direct and indirect costs of licensing programs; Health and Safety Code, §141.009(15), which authorizes establishing standards relating to records of criminal convictions of camp personnel; Health and Safety Code, §141.0095, which establishes a training and examination program on sexual abuse and child molestation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new section affects the Health and Safety Code, Chapters 12, 141, and 1001; Government Code, Chapter 531; and implements Government Code, §2001.039.

#### §265.12. *Directors, Supervisors, and Staff.*

(a) On-site director required. Each youth camp shall be under the on-site direction of a qualified adult with at least two years of experience working with children. The director shall be knowledgeable in camp administrative practices and shall have at least one year of leadership experience with an organized youth camp, school or other youth-serving organization, such as the Boy Scouts of America or Young Men's Christian Association (YMCA).

(b) Adult supervisors. Each youth camp shall have at least one adult supervisor who is responsible for the supervision of no more than ten children in the camp. For any hazardous activity the supervisor(s) must be in the immediate vicinity (within sight and/or hearing) of the campers. An "all camp" sedentary activity, not requiring physical activity, may require less supervision, and each camp shall establish its own guidelines, but not less than one adult supervisor to every 25 campers. The camp director shall not be included in the supervisor to camper ratio in camps serving over 50 campers at one time.

(c) Supervision of hazardous activity. Hazardous camp activities shall be conducted by and under the direct supervision of a qualified adult capable of implementing safety standards established by the department or the camp. The specialist shall also have documented training or at least two years documented experience in conducting the activity.

(d) Written personnel policies and practices. A camp shall have written personnel policies and practices for both campers and staff. Supervisors shall be informed of these policies and practices prior to assuming responsibility for campers.

(e) Staff member character and integrity records. The camp management shall ascertain and have on record information, such as a letter of reference, attesting to the character and integrity of each staff member, and information, such as training certificates, attesting to the ability of each staff member to perform the tasks required in his or her position.

(f) Criminal conviction and sex offender registration record requirements. The camp management shall have on file a record of any criminal conviction for all adult staff members and all adult volunteers working at the camp. Camp management shall also have on file a written evaluation for an adult staff member or volunteer, showing that management has determined the person is suitable for a position at the youth camp despite a criminal conviction. If the records are located off-site, a letter from the national or regional headquarters of the organization stating the names of individuals at the camp site for whom these checks have been conducted, must be available at the camp site. All records of criminal convictions and written evaluations for a camp or camping organization must be located at a specific site within Texas, and must be made available to department personnel within two business days upon request. Youth camps are responsible for ensuring that criminal and sex offender background checks have been conducted for international staff obtained through the J-1 visa process, and that documentation of these checks are located with other staff background checks at the specific site within Texas. Records of criminal convictions and sex offender status may be obtained by:

(1) an annual criminal background check consisting of either:

(A) performing a criminal background check, such as the Texas Department of Public Safety Public Criminal Records check, which may be accessed at [https://records.txdps.state.tx.us/dps\\_web/APP\\_PORTAL/index.aspx](https://records.txdps.state.tx.us/dps_web/APP_PORTAL/index.aspx). A hard copy printout of the search results, whether or not the results are positive, must be maintained with the sex offender background documentation; or

(B) including a question on an employment or volunteer application asking for a history of criminal convictions, such as "Have you ever been convicted of a felony or a misdemeanor?" If this question is answered with "Yes," then the camp must obtain documentation of the criminal conviction; and

(2) performing an annual background check using a Sex Offender Registration database for each staff member's permanent residence and educational residence if applicable. In Texas, the Sex Offender Registration database may be found at <https://records.txdps.state.tx.us/soSearch/default.cfm>. A hard copy printout of the search results, whether or not the results are positive, must be maintained with the criminal background documentation.

(g) Sexual abuse and child molestation training and examination program.

(1) Effective June 1, 2006, a youth camp licensee may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(A) the individual submits to the licensee or the youth camp has on file documentation that verifies the individual within the preceding two years has successfully completed the training and examination program required by this subsection; or

(B) the individual successfully completes the youth camp's training and examination program approved by the department during the individual's first workweek, and prior to any contact with campers unless supervised during the first workweek by an adult who has successfully completed the program. The youth camp must have documentation on file and available for inspection within two business days of request by the department verifying that the individual successfully completed the youth camp's training and examination program.

(2) For purposes of this subsection, the term "contact with campers" does not include visitors such as a guest speaker, an enter-

tainer, or a parent who visits for a limited purpose or a limited time if the visitor has no direct and unsupervised interaction with campers. A visitor may have direct and unsupervised contact with a camper to whom the visitor is related. A camp may require training and an examination for visitors if it chooses.

(3) A youth camp licensee must retain in the person's personnel record a copy of the documentation required or issued under paragraph (1)(A) of this subsection for each employee or volunteer until the second anniversary of the examination date.

(4) Prior to their use, the department may approve training and examination programs offered by trainers under contract with youth camps, by online training organizations, or programs offered in another format, such as a videotape, authorized by the department.

(5) A training and examination program on sexual abuse and child molestation approved by the department must at a minimum include training and an examination on:

(A) the definitions and effects of sexual abuse and child molestation;

(B) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(C) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse; and

(D) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation. Training shall include the need to minimize one-on-one isolated encounters between an adult and a minor or between two minors.

(6) The training program must last for a minimum of one hour and discuss each of the topics described in paragraph (5) of this subsection.

(7) The examination must consist of a minimum of 25 questions which shall cover each of the topics described in paragraph (5) of this subsection.

(8) To successfully complete the training program, each employee or volunteer must achieve a score of 70% or more correct on an individual examination. If the examination is taken on-line, the employee or volunteer must retain a certificate of completion indicating they successfully completed the course.

(9) The department may assess a fee of \$125 to each applicant to cover the costs of the department's initial review and each follow-up review of a training and examination program.

(10) All applications and fees shall be mailed to the Professional Licensing and Certification Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. A blank application may be obtained by calling the Professional Licensing and Certification Unit at (512) 834-6770 or may be downloaded from [www.tdh.state.tx.us/beh/gs/youth.htm](http://www.tdh.state.tx.us/beh/gs/youth.htm).

(11) The department, at least every five years from the date of initial approval, shall review each training and examination program approved by the department to ensure the program continues to meet the criteria and guidelines established under this subsection.

(h) Records retention. All applications, background check reports, training documentation, and other required personnel documentation required by these rules shall be maintained in hard copy or electronic format for a minimum of two years following a person's last day of service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600341

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 458-7111 x6972



## **TITLE 28. INSURANCE**

### **PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION**

#### **CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS**

##### **28 TAC §§126.5 - 126.7**

The Texas Department of Insurance, Division of Workers' Compensation proposes amendments to §126.5 and §126.6 and new §126.7 concerning required medical evaluations, entitlement and procedure for requesting a designated doctor. The proposed amendments and new section are necessary to implement changes to the Labor Code §§408.004 and 408.0041 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

HB 7 changed Labor Code §408.004 to limit the use of an insurance carrier selected doctor for a required medical examination (RME) to only the resolution of issues regarding the appropriateness of the health care received by an injured employee (employee). Proposed amendments to §126.5 provide clarification regarding the reasons and timeframes for which an RME may be requested and granted.

Proposed amendments to §126.6 provide clarification regarding rescheduling appointments when there is a scheduling conflict, filing of reports by the RME doctor, suspension and reinstatement of temporary income benefits (TIBs) when the employee fails to attend, without good cause, a required medical exam following a designated doctor exam. Specifically, subsection (b) permits the examining doctor and injured employee to extend the rescheduled date beyond seven days from the originally scheduled appointment by mutual agreement without resort to intervention by the Division, simplifying the process. Proposed subsections (e) - (h) clarify the reporting requirements for allowable RMEs. Proposed subsection (g) clarifies that a return to work determination by an RME, whether pursuant to Labor Code §§408.0041 or 408.151, is a post-designated doctor examination, providing consistency in the RME process. Additionally, proposed subsection (j) tracks the revised circumstances in Labor Code §§408.004 and 408.0041 under which an injured employee's failure to attend an RME, without good cause, permits an insurance carrier to suspend TIBs. Those circumstances are statutorily limited to RMEs following a designated doctor examination. Proposed subsection (j) is further amended to reinstate

TIBs, following an injured employee's attendance at a rescheduled examination, effective upon the date the injured employee contacted the doctor's office to reschedule the examination. This eliminates unnecessary gaps in benefit distribution to the injured employee for administrative delays.

HB 7 also changed Labor Code §408.0041 to expand the issues a designated doctor may be asked to evaluate, and to allow an insurance carrier to have an RME to evaluate maximum medical improvement (MMI) and permanent whole body impairment, the extent of the employee's compensable injury, whether the employee's disability is a direct result of the work related injury, the ability of the employee to return to work, or similar issues, but only after a designated doctor examination for the specific issue(s) has taken place. The Division has determined that existing §130.5 is no longer appropriate in Chapter 130 as the role of the designated doctor has been expanded to address other issues than those related to maximum medical improvement, whole body impairment ratings and Supplemental Income Benefits (SIBs). As such, the general designated doctor procedural aspects of §§130.5 and 130.6 have been moved to proposed new §126.7. Proposed §126.7 provides procedural guidance regarding the request for, and selection of, a designated doctor. The new section also provides procedural guidance regarding the responsibilities of the designated doctor. To harmonize procedures related to the expanded role of designated doctors in the workers' compensation system, subsection (i)(2) of proposed §126.7 permits the marking and highlighting of medical records submitted by the treating doctor and insurance carrier for all determinations made by a designated doctor, including those made pursuant to Labor Code §408.151. Prior rules prohibited the marking of medical records as it pertained to RTW determinations during SIBs. Other changes to past procedures associated with designated doctor examinations are found in subsection (i)(3) and (4), which extend the time treating doctors and insurance carriers have to provide the designated doctor with medical records and analyses, reducing the necessity of rescheduling the examination. The records would now be required to be 'sent' within five working days of the examination, and 'received' at least one working day prior to the examination. Further preventing a delay in resolution of questions presented to the designated doctor is subsection (j), which requires the completion of additional testing by the designated doctor or another provider on referral within seven working days of the designated doctor's physical examination. The 7-day timeframe has been retained from past rules because the timeliness of a designated doctor report has implications for the appropriate delivery of benefits. Delays in receiving the doctor's report can result in overpayment or underpayment of income benefits or a delay in obtaining necessary medical benefits. Additionally, proposed subsection (v) formally permits parties to file a request for clarification of a designated doctor's report with the Division, and requires a copy of the request be provided to the opposing party. The determination to forward the request to the designated doctor remains at the discretion of the Division, but this process provides the opposing party with notice and an opportunity to have its position considered by the Division. Existing §126.7 is proposed for repeal elsewhere in this issue of the *Texas Register*.

The Division has made changes throughout the proposal to reflect language changes of "commission" to "Commissioner" or "Division" as appropriate.

Brent Hatch, Director, Central Claims Management and Customer Services, has determined that for the first five-years the proposed sections will be in effect, there will be no fiscal impact



to state and local governments as a result of the enforcement or administration of the proposed sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Hatch has also determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the sections will be compliance with and implementation of legislative directives and consistency in the rules under which all Texas Workers' Compensation system participants function.

The proposed amendments to the sections are supportive of and consistent with changes being made to other rules as a result of HB 7, and those changes are the larger driver of benefits and costs to be experienced.

The anticipated benefit to employees will be more clearly regulated required medical exams (RMEs). It is anticipated that employees will experience no additional costs.

The anticipated benefit to insurance carriers is faster resolution of disputes, which should reduce the potential for overpayments (thus reducing costs). In addition, the companion changes being made to Chapters 180 and 130 regarding training of designated doctors, certification of MMI/assignment of impairment ratings, and easier access to designated doctors should reduce costs through fewer examinations and fewer disputes. It is anticipated that insurance carriers will benefit from the added clarification that should ensure that employees submit to RMEs when applicable, but only when applicable.

Employers should benefit to the extent that reductions may translate to savings in premiums, and from timely return to work of employees.

Health care providers should benefit from the clarification in the rules. They may experience increased training costs associated with the proposed rules, and the Chapter 180 rules concurrently proposed. The Division estimates that training costs will be approximately \$500 to attend the initial required designated doctor training and testing. The bi-annual training costs are also estimated to be approximately \$500.

It is anticipated that insurance carriers and employees will benefit from the requirements and prohibitions on initiating and terminating income benefits.

Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006 to Norma Garcia, General Counsel, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Brent Hatch, Director of Central Claims Management and Customer Services, MS-600, Division of Workers' Compensation, Texas Department

of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

The sections are proposed under Labor Code §§408.004, 408.0041, 408.151, 402.00111, and 402.061. Section 408.004 provides for required medical examinations. Section 408.0041 provides for designated doctor examinations. Section 408.151 provides for required medical examinations and designated doctor examinations during supplemental income benefits. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following statutes are affected by this proposal: Statute Labor Code §§408.004, 408.0041, 408.151

*§126.5. Entitlement and Procedure for Requesting Required Medical Examinations.*

(a) A doctor who has contracted with or is employed by an authorized workers' compensation health care network established under Chapter 1305, Insurance Code, (network doctor) may not perform a required medical examination, as those terms are used under the Texas Workers' Compensation Act, for an employee receiving medical care through the same network.

(b) The Division [commission] may authorize a required medical examination (RME) for any reason set forth in the Texas Workers' Compensation Act (the Act), Texas Labor Code[;]§408.004, §408.0041, or §408.151 at the request of the insurance carrier (carrier) [; or the commission]. The request shall be made in the form and manner prescribed by the Division [commission]. A carrier is not entitled to take action with respect to benefits based on, and the Division [commission] shall not consider, a report of an RME doctor that was not approved or obtained in accordance with this section.

(c) [(b)] Carriers [carriers] are entitled to RMEs by a doctor of their choice in accordance with this subsection as follows:

(1) Pursuant to Texas Labor Code §408.004, once every 180 days, to resolve any questions about the appropriateness of the health care received by the injured employee (employee)[; or similar issues]. The carrier's first RME may be requested at any time after the date of injury. A subsequent examination may be requested once every 180 days after the first examination and must be performed by the same doctor unless otherwise approved by the Division. This paragraph only applies to requests for required medical examinations of employees not receiving medical treatment through an authorized workers' compensation health care network. [commission. For dates of injury on or after September 1, 1997, the commission may approve no more than three RMEs at the carrier's request before the expiration of 180 days in the event that a medical opinion is needed to determine if:]

[(A) there has been a change in the employee's condition;]

[(B) there is a need to change the employee's diagnosis;]

[(C) the treatment should be extended to another body part or system; or if the extent of injury has changed;]

[(D) the compensable injury is a producing cause of additional problems or conditions;]

[(E) disability exists, because of newly discovered information; or]

~~[(F)]~~ a proposed surgery is necessary to treat the compensable injury.]

(2) For the purpose of evaluating a designated doctor's determination on the issues listed under Labor Code §408.0041, a [Pursuant to Texas Labor Code §408.0041, for the purpose of evaluating a designated doctor's determination on maximum medical improvement (MMI) and/or permanent whole body impairment rating. A] carrier is entitled to an examination under this subsection only after [upon receipt of a Report of Medical Evaluation from] a Designated Doctor exam under §126.7[130.6] of this title (relating to Designated Doctor Examinations; Requests and General Procedures [for Maximum Medical Improvement and/or Impairment Rating]).

(3) For the purpose of evaluating a designated doctor's determination pursuant [Pursuant] to Texas Labor Code §408.151, to determine if the employee's medical condition resulting from the compensable injury has improved sufficiently to allow the employee to return to work [is a direct result of the impairment resulting from a compensable injury]. For the purposes of this paragraph [subsection], the carrier may not require an employee to submit to an RME more than once per year if:

(A) an employee is receiving supplemental income benefits on or after the second anniversary of the date of the employee's initial entitlement to supplemental income benefits, and

(B) in the [preceding] year preceding the request for the RME, the employee's medical condition resulting from the compensable injury had not improved sufficiently to allow the employee to return to work during that year.

~~(d) [(e)]~~The[On or after September 1, 2003, the] doctor selected to perform an RME must be on the Division's [commission's] approved doctors list and, if the purpose of the examination is to evaluate MMI and/or permanent impairment, be authorized to assign impairment ratings under §130.1(a) of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

(e) ~~[(d)]~~ Except for an examination under subsection (b)(2) and (3) of this section, the Division [commission] shall not require an employee to submit to a medical examination at the carrier's request until the carrier has made an attempt to obtain the agreement of the employee for the examination as required by subsection (g) of this section. The carrier shall notify the Division [commission] in the form and manner prescribed by the Division [commission] of any agreement or non-agreement by the employee regarding the requested examination. An examination of an employee by a doctor selected by the carrier shall be requested as follows:

(1) Prior to requesting an RME from the Division [commission], the carrier shall send a copy of the request to the employee and the employee's representative (if any) in the manner prescribed by subsection (g) of this section in an attempt to obtain the employee's agreement to the examination.

(2) The carrier shall give the employee ten days to agree to the examination. The ten-day period begins on the fifth day after [from] the date the carrier sends the request to the employee and the employee's representative (if any). Though the employee has ten days to respond to the request, the carrier is not prohibited from contacting the employee or the employee's representative (if any) by telephone to discuss the request [with the employee] and obtain the employee's or the representative's response.

(3) The carrier shall send the request to the Division [commission] after either obtaining the employee's answer to the request or when the employee fails to respond after the ten-day period.

~~[(e)]~~ The commission shall monitor all carrier requests for medical examinations that are requested before the expiration of the 180-day period subsection (b)(1) of this section through statistical analysis, audits, or other appropriate means.]

~~[(f)]~~ An unreasonable request for an additional medical examination under subsection (b) of this section includes:]

~~[(1)]~~ a request for an additional examination for a reason which does not comply with this section.]

~~[(2)]~~ a request for a different doctor without sufficient grounds;]

~~[(3)]~~ a request which would result in a violation of subsection (b) of this section; and]

~~[(4)]~~ a request which provides false, incomplete, or misleading information.]

~~(f) [(g)]~~ The carrier shall send a copy of the request for a required medical examination [order] required by subsection (e) ~~[(d)]~~ of this section to the employee and the employee's representative (if any) by facsimile or electronic transmission if the carrier has been provided with a facsimile number or email address for the recipient, otherwise, the carrier shall send the request by other verifiable means.

~~(g) [(h)]~~ The carrier shall maintain copies of the request for a required medical examination [order] and shall also maintain verifiable proof of successful transmission of the information. For these purposes, verifiable proof includes, but is not limited to, a facsimile confirmation sheet, certified mail return receipt, delivery confirmation from the postal or delivery service, or a copy of the electronic submission.

#### §126.6. ~~[Order For]~~ Required Medical Examination.

(a) When a request is made by the insurance carrier (carrier), or the Division [commission], for a medical examination, the Division [commission] shall determine if an examination should occur [be ordered]. The Division [commission] shall grant or deny [issue an order granting or denying] the request within seven days of the date the request is received by the Division [commission]. A copy of the action of the Division [order] shall be sent to the injured employee[employee], the employee's representative (if any), and the carrier. Thenotice[order] shall explain the circumstances under which an employee may experience [the potential] loss of benefits and penalty exposure for failing to attend the examination as well as the need to reschedule a missed examination. An agreement between the parties for an examination under §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) that the carrier has a right to, has the same effect as the action of the Division [commission's formal order].

(b) All examinations required under this section [ordered] must be scheduled to occur within 30 days after receipt of the notice [order], with at least 10 days notice to the employee and the employee's representative (if any). If a scheduling conflict exists, the employee and the doctor shall contact each other. The doctor or the employee who has the scheduling conflict must make contact at least 24 hours prior to the appointment. The 24-hour [hours] requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within seven days of the originally scheduled examination, unless an extension is agreed upon by the employee and doctor [granted by the commission's field office]. In this event, the examining doctor shall notify the carrier and the 10 days notice requirement does not apply to a rescheduled examination.

(c) The employee's treating doctor~~;~~ chosen under the Texas Workers' Compensation Act (the Act), Texas Labor Code, §408.022, may be present at an examination scheduled with a doctor selected by the carrier. The employee's treating doctor may observe the conduct of the examination, and may consult with the examining doctor about the course of the employee's treatment. The employee's treating doctor shall not otherwise participate in, impede, or advise the employee not to cooperate with the examination. In initially scheduling the examination, a reasonable attempt shall be made to accommodate the schedule of the treating doctor if the employee wants the treating doctor to attend the examination and the treating doctor is willing to do so. However, once an examination is scheduled based on the treating doctor's availability, the examination shall not be delayed, canceled, or rescheduled due to the treating doctor's scheduling conflicts unless:

(1) - (2) (No change.)

(d) (No change.)

(e) An RME doctor who, selected by the carrier or the Division, conducts an examination regarding the appropriateness of the health care received by the employee, shall complete a medical report that includes objective findings of the examination and an analysis that explains how the medical condition and objective findings lead to the conclusion reached by the doctor. In addition, the RME doctor shall file the report with the insurance carrier by facsimile or electronic transmission, and shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the RME doctor has been provided with a facsimile number or email address for the recipient, otherwise, the RME doctor shall send the report by other verifiable means.

(f) ~~[(e)]~~ An RME doctor who, subsequent to a designated doctor's examination, determines the employee has reached maximum medical improvement or who assigns an impairment rating, shall complete and file the report as required by §130.1 and §130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment and Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by Doctor Other than the Treating Doctor). Otherwise, the RME doctor shall not certify MMI or assign an impairment rating. If the RME doctor disagrees with the designated doctor's opinion regarding MMI, the RME doctor's report shall explain why the RME doctor believes the designated doctor was mistaken or why the designated doctor's opinion is no longer valid. Other reports shall be completed in the form and manner prescribed by the Division ~~[according to applicable rules for consultant medical reports as described in §133.104 of this title (relating to Consultant Medical Reports)]~~ and shall be sent to the carrier, employee, the treating doctor, and Division ~~[commission]~~ no later than 10 days after the examination.

(g) ~~[(f)]~~ An RME doctor who, subsequent to a designated doctor's examination, determines that the employee can return to work immediately with or without restrictions is required to file a Work Status Report, as described in §129.5 of this title (relating to Work Status Report) within seven days of the date of the examination of the employee. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the RME doctor shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the RME doctor has been provided with a facsimile number or email address for the recipient, otherwise, the RME doctor shall send the report by other verifiable means.

(h) An RME doctor who, subsequent to a designated doctor's examination, addresses issues other than those listed in subsections (f) and (g) of this section, shall file a report with the Division in the form

and manner prescribed by the Division. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the RME doctor shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the RME doctor has been provided with a facsimile number or email address for the recipient, otherwise, the RME doctor shall send the report by other verifiable means.

(i) ~~[(g)]~~ A doctor who conducts an examination solely under the authority of ~~[an order issued according to]~~ this rule shall not be considered a designated doctor under the Texas Labor Code~~;~~ §408.0041, §408.122 or §408.125. Examinations with a designated doctor are not subject to any limitations under the provisions for RMEs.

(j) ~~[(h)]~~ A carrier may suspend temporary income benefits (TIBs) if an employee, without good cause, fails to attend an RME required pursuant to Labor Code §408.0041(f).

(1) In the absence of a finding by the Division ~~[commission]~~ to the contrary, a carrier may presume that the employee did not have good cause to fail to attend the examination if ~~[:]~~

~~[(A)]~~ by the day the examination was originally scheduled to occur the employee has both:

(A) ~~[(i)]~~ failed to submit to the examination; and

(B) ~~[(ii)]~~ failed to contact the RME doctor's office to reschedule the examination to occur no later than the later of the seventh day after the originally scheduled examination date or the doctor's first available appointment date~~;~~ ~~or~~ ]

~~[(B) after rescheduling the examination as provided in subsection (i)(1)(A)(ii) of this section, the employee failed to submit to the rescheduled examination].~~

(2) If, after the carrier suspends TIBs pursuant to this section, the employee submits to the required medical examination, the carrier shall reinstate temporary income benefits effective as of the date the employee contacted the doctor's office to reschedule the examination ~~[submitted to the examination]~~. The re-initiation shall occur no later than the seventh day following ~~[the latter of:]~~

~~[(A)]~~ the date the carrier was notified that the employee ~~[had]~~ attended the examination~~;~~ ~~or~~

~~[(B) the date that the carrier was notified that the commission found that the employee had good cause for not attending the examination].~~

(3) An employee is not entitled to TIBs for a period during which the carrier was entitled to suspend ~~[suspended]~~ benefits pursuant to this section unless the employee later submits to the examination and the Division ~~[commission]~~ finds or the carrier determines that the employee had good cause to fail to attend the appointment.

(k) ~~[(i)]~~ An employee who, without good cause, fails or refuses to appear at the time scheduled for an examination authorized by this section may be assessed an ~~[a Class D]~~ administrative penalty under ~~[the]~~ Labor Code §§408.004 and 408.0041~~[Act, 408.004(f)]~~. An employee who fails to submit to an examination at the carrier's request when the carrier selected doctor refuses to allow the treating doctor to attend the examination or when the RME doctor cancels the examination does not commit an administrative violation ~~[and shall not have benefits suspended for failing to attend that particular appointment]~~.

(l) ~~[(j)]~~ The Division ~~[commission]~~ shall require~~[order]~~ examinations requiring travel of up to 75 miles from the employee's residence, unless the treating doctor certifies that such travel may be harmful to the employee's recovery. Travel over 75 miles may be authorized if good cause exists to support such travel. The carrier shall pay rea-

sonable travel expenses incurred by the employee in submitting to any required medical examination, as specified in Chapter 134 of this title (relating to Benefits - Guidelines For Medical Service, Charges and Payments) [by §134.6 of this title (relating to Travel Expenses)].

§126.7. Designated Doctor Examinations: Requests and General Procedures.

(a) The Division may require a medical examination by a designated doctor at the request of the insurance carrier, an injured employee (employee), the employee's representative (if any), the medical advisor, or on its own motion. A doctor who has contracted with or is employed by an authorized workers' compensation health care network established under Chapter 1305, Insurance Code, (network doctor) may not perform a designated doctor examination, as those terms are used under the Texas Workers' Compensation Act, for an employee receiving medical care through the same network.

(b) The request shall be made in the form and manner prescribed by the Division.

(c) A designated doctor examination shall be used to resolve questions about the following:

- (1) the impairment caused by the employee's compensable injury;
- (2) the attainment of maximum medical improvement (MMI);
- (3) the extent of the employee's compensable injury;
- (4) whether the employee's disability is a direct result of the work-related injury;
- (5) the ability of the employee to return to work (RTW); or
- (6) issues similar to those described by paragraphs (1) - (5) of this subsection.

(d) The report of the designated doctor is given presumptive weight regarding the issue(s) in question and/or dispute, unless the preponderance of the evidence is to the contrary. No action related to income benefits may be taken by the carrier based on the report of the designated doctor that provides a prospective MMI or RTW date.

(e) The Division, within 10 days after approval of a valid request, shall issue a written notice assigning a designated doctor; schedule a designated doctor appointment for a date no earlier than 14 days, but no later than 21 days from the date of the approval; and notify the employee and the insurance carrier that the designated doctor will be directed to examine the employee. The written notice shall:

- (1) indicate the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination;
- (2) explain the purpose of the designated doctor examination;
- (3) require the employee to submit to an examination by the designated doctor on the stated date and time; and
- (4) require the treating doctor and insurance carrier to forward all medical records in compliance with subsection (i)(3) of this section.

(f) The designated doctor's office and the employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a med-

ical emergency). The rescheduled examination shall be set to occur within 14 days of the originally scheduled examination or, if the doctor is unavailable, on the doctor's next available appointment date. Within 24 hours of rescheduling, the designated doctor shall contact the Division's field office and the insurance carrier with the time and date of the rescheduled examination.

(g) An insurance carrier may suspend temporary income benefits (TIBs) if an employee, without good cause, fails to attend a designated doctor examination.

(1) In the absence of a finding by the Division to the contrary, an insurance carrier may presume that the employee did not have good cause to fail to attend the examination if by the day the examination was originally scheduled to occur the employee has both:

- (A) failed to submit to the examination; and
- (B) failed to contact the designated doctor's office to reschedule the examination in accordance with subsection (f) of this section.

(2) If, after the insurance carrier suspends TIBs pursuant to this subsection, the employee submits to the designated doctor examination, the insurance carrier shall reinstate TIBs effective as of the date the employee contacted the doctor's office to reschedule the examination unless the report of the designated doctor indicates that the employee has reached MMI or is otherwise not eligible for income benefits. The re-initiation of TIBs shall occur no later than the seventh day following the date the insurance carrier was notified that the employee attended the examination.

(3) An employee is not entitled to TIBs for a period during which the insurance carrier suspended benefits pursuant to this subsection unless the employee later submits to the examination and the Division finds or the insurance carrier determines that the employee had good cause for failure to attend the examination.

(h) If at the time the request is made, the Division has previously assigned a designated doctor to the claim, the Division shall use that doctor again, if the doctor is still qualified and available. Otherwise, the Division shall select the next available doctor on the Division's Designated Doctor List who:

- (1) has not previously treated or examined the employee within the past 12 months and has not examined or treated the employee with regard to a medical condition being evaluated in the designated doctor examination;
- (2) does not have any disqualifying associations as described in §180.21 of this title (relating to Division Designated Doctor List); and
- (3) has credentials appropriate to the issue in question and the employee's medical condition.

(i) The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of a dispute under this section without a signed release from the employee.

(1) The treating doctor and insurance carrier shall provide to the designated doctor copies of all the employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor.

(2) The treating doctor and insurance carrier may also send the designated doctor an analysis of the employee's medical condition, functional abilities, and return-to-work opportunities. The analysis may include supporting information such as videotaped activities of the employee as well as marked copies of medical records, provided the original record is provided intact and unmarked. If the insurance carrier

sends an analysis to the designated doctor, the insurance carrier shall send a copy to the treating doctor, the employee, and the employee's representative (if any). If the treating doctor sends an analysis to the designated doctor, the treating doctor shall send a copy to the insurance carrier, the employee, and the employee's representative (if any).

(3) The treating doctor and insurance carrier shall ensure that the required records and analyses (if any) are sent to the designated doctor no later than the fifth working day prior to the date of the designated doctor examination.

(4) If the designated doctor has not received the medical records or any part thereof at least one working day prior to the examination, the designated doctor shall:

(A) report this violation to the Division's Compliance and Practices section; and

(B) reschedule the examination in accordance with subsection (f) of this section. The doctor shall conduct the rescheduled examination regardless of whether or not the complete medical record has been timely received.

(j) The designated doctor shall review the employee's medical records, including an analysis of the employee's medical condition, functional abilities and return to work opportunities provided by the insurance carrier and treating doctor and shall perform a hands-on examination. The designated doctor shall give the medical records reviewed the weight he/she feels is appropriate.

(k) The designated doctor shall perform additional testing or refer an employee to other health care providers when necessary to determine the issue in question. Any additional testing required for the evaluation is not subject to preauthorization requirements in accordance with the Labor Code §413.014. Any additional testing must be completed within seven working days of the designated doctor's physical examination of the employee. Use of another health care provider under this subsection extends the amount of time the designated doctor has to file the report by seven working days.

(l) To avoid undue influence on the designated doctor:

(1) except as provided by subsection (i) of this section, only the employee or appropriate Division staff may communicate with the designated doctor prior to the examination of the employee by the designated doctor regarding the employee's medical condition or history;

(2) after the examination is completed, communication with the designated doctor regarding the employee's medical condition or history may be made only through appropriate Division staff; and

(3) the designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury or with a peer review doctor identified by the insurance carrier who examined the employee's claim.

(m) The insurance carrier, treating doctor, employee, or employee's representative (if any) may contact the designated doctor's office to ask about administrative matters such as whether the designated doctor received the records, whether the exam took place, or whether the report has been filed, or similar matters.

(n) The designated doctor shall complete and file any required report of medical evaluation, along with an appropriate narrative report. The narrative report must include at least the following elements:

(1) a list of records, documents, films, and other information reviewed in reaching the medical opinions rendered;

(2) the date of the examination;

(3) a history of the medical condition or injury;

(4) a summary of the medical care rendered prior to the date of the examination;

(5) objective findings of the examination;

(6) an analysis that explains how the medical condition and objective findings lead to the conclusion reached by the doctor; and

(7) opinion(s) responsive to the questions asked by the Division in the assignment of the examination.

(o) The report of medical evaluation under this section shall be filed by the seventh working day after the latter of:

(1) the date of the examination; or

(2) the receipt of all of the medical information required by this section.

(p) The report of medical evaluation required to be filed under this section shall be filed with:

(1) the insurance carrier by facsimile or electronic transmission;

(2) the Division, in the form and manner prescribed by the Division; and

(3) the employee and the employee's representative, if any, by facsimile or electronic transmission if the doctor has been provided the recipient's facsimile number or email address, or other verifiable means.

(q) The designated doctor shall maintain accurate records, including the employee records, analysis (including supporting information), and narratives provided by the insurance carrier and treating doctor, to reflect:

(1) the date and time of any designated doctor appointments scheduled with an employee;

(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled;

(3) the date of the examination;

(4) the date medical records were received from the treating doctor or any other person or organization;

(5) the date the medical evaluation report, including the narrative report described in subsection (n) of this section, was submitted to all parties;

(6) the name of all referral health care providers, date of appointments and reason for referral by the designated doctor; and

(7) the date the doctor contacted the Division for assistance in obtaining medical records from the insurance carrier or treating doctor.

(r) The insurance carrier shall pay any accrued income benefits, and shall begin or continue to pay weekly income benefits, in accordance with the designated doctor's report for the issue(s) in dispute, no later than five days after receipt of the report or five days after receipt of notice from the Division, whichever is earlier.

(s) The insurance carrier, the employee, and the employee's representative (if any) is not entitled to a subsequent designated doctor examination until the earlier of:

(1) the 60th day after the prior designated doctor examination was held; or

(2) the date the insurance carrier or the employee is found by the Division to have good cause, such as the inclusion of additional body parts (extent of injury).

(t) On or after the second anniversary of the initial award of Supplemental Income Benefits (SIBs), the insurance carrier may not require an employee who is receiving SIBs to submit to a designated doctor examination more than annually, if in the preceding year, the employee's medical condition resulting from the compensable injury has not improved sufficiently to allow the employee to return to work.

(u) If the designated doctor is asked to determine the ability of the employee to return to work, and determines that the employee is not able to return to work immediately, but the prospective date of the employee's ability to return to work is within 60 days after the examination, the designated doctor shall schedule a second examination on or after such prospective RTW date without further action of the Division. This procedure may only be used to schedule one additional examination. The designated doctor will issue any appropriate reports after the first examination and will notify the Division's field office and the insurance carrier within 24 hours, setting out the date and time of the second examination.

(v) If the designated doctor is asked to determine MMI date, and determines that the employee was not at MMI, but the prospective date is within 60 days after the examination, the designated doctor shall schedule a second examination on or after such prospective MMI date without further action of the Division. This procedure may only be used to schedule one additional examination. The designated doctor will issue any appropriate reports after the first examination and will notify the Division's field office and the insurance carrier within 24 hours, setting out the date and time of the second examination.

(w) Parties may file a request with the Division for clarification of the designated doctor's report. A copy of the request must be provided to the opposing party. The Division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report. The Division, at its discretion, may request clarification from the designated doctor on issues the Division deems appropriate. If, in order to respond to the request for clarification, the designated doctor has to reexamine the injured employee, the doctor shall:

(1) make him/herself available to conduct the reexamination within 10 working days of receiving the request (even if it means traveling back to the location of the original examination); and

(2) respond to a request for clarification within five working days of receipt and shall provide copies of the response to the parties specified in subsection (p) of this section.

(x) Upon receipt of a request for a benefit review conference, the Division shall resolve a dispute of the opinion of a designated doctor through the dispute resolution processes outlined in Chapters 140 - 147 of this title (relating to Dispute Resolution).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600351

Norma Garcia  
General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 804-4288



## **28 TAC §126.7**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Insurance, Division of Workers' Compensation proposes repeal of §126.7 concerning suspension of temporary income benefits based on the opinion of a carrier-selected required medical examination doctor. The repeal is necessary to implement changes to the Labor Code §408.004 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

HB 7 changed the Labor Code §408.004 by limiting the reasons an injured employee (employee) may be required to attend a required medical examination prior to a designated doctor examination to the issue of appropriateness of the health care received by the employee. HB 7 also removed the provision for the suspension of temporary income benefits for failure to attend the required medical examination on that issue. HB 7 also changed §408.0041 to provide the designated doctor's opinion presumptive weight regarding entitlement and payment of income benefits, and to address the suspension of temporary income benefits only for failure to attend a required medical exam after a designated doctor exam. These statutory changes provide procedural guidance to suspend benefits based on the opinion of the designated doctor or the actions (failure to attend) of the employee, rather than on a report or opinion of a required medical examination doctor. Section 126.7 as written is no longer applicable since there are no situations in which temporary income benefits may be suspended based on the opinion of the required medical examination doctor.

The Division simultaneously proposes amendments to §§126.5 and 126.6, and new §126.7 regarding required medical exams and designated doctor exams which are published elsewhere in this issue of the *Texas Register*. Proposed amendments to §126.5 provide clarification regarding the reasons and timeframes for which an RME may be requested and granted. Proposed amendments to §126.6 provide clarification regarding rescheduling appointments when there is a scheduling conflict, filing of reports by the RME doctor, suspension and reinstatement of temporary income benefits when the injured employee fails to attend, without good cause, a required medical exam or a designated doctor exam. Proposed §126.7 provides procedural guidance regarding the request for, and selection of, a designated doctor. The new section also provides procedural guidance regarding the responsibilities of the designated doctor.

Brent Hatch, Director, Central Claims Management and Customer Services, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal impact to state and local governments as a result of the repeal. There will be no measurable effect on local employment or the local economy as a result of the proposed repeal.

Mr. Hatch has also determined that for each year of the first five years the proposed repeal is in effect the public benefits anticipated as a result of the repeal will be compliance with and implementation of legislative directives and consistency in the rules under which all Texas Workers' Compensation system participants function.

The anticipated benefit to the employee and insurance carrier are more clearly delineated situations in which the insurance carrier may suspend payment of temporary income benefits. Employers should benefit to the extent that the reductions in costs may translate to savings in premiums, and from timely return to work of employees. There are no anticipated costs as a result of the proposed repeal.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006 to Norma Garcia, General Counsel, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Brent Hatch, Director of Central Claims Management and Customer Services, MS-600, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

The repeal is proposed under Labor Code §§408.004, 402.00111 and 402.061. Section 408.004 provides the authority to require an employee to attend a required medical exam. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following section is affected by this proposal: Statute Labor Code §408.004

*§126.7. Suspension of Temporary Income Benefits Based On the Opinion of a Carrier-Selected Required Medical Examination Doctor.* This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600349

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 804-4288



## **28 TAC §126.14**

The Texas Department of Insurance, Division of Workers' Compensation proposes new §126.14, regarding a medical examination by the treating doctor to define the compensable injury. The section is necessary as a result of House Bill 7, 79th Legislature, Regular Session, effective September 1, 2005, which established Labor Code §408.0042 for the purpose of identifying an injured employee's compensable injury. Labor Code §408.0042 requires the injured employee to attend one exam-

ination per claim with the injured employee's treating doctor at the request of the insurance carrier. This examination is a voluntary option for insurance carriers to utilize as a tool in managing claims. The examination's purpose is to have the injured employee's treating doctor identify the specific injuries that were caused or aggravated by the work-related incident or activities. The insurance carrier will make a determination on whether the injuries and diagnoses identified are accepted as part of the compensable injury.

The Division anticipates that the report from this examination will not likely be the first medical record the insurance carrier receives. The treating doctor will provide the medical records from treatment and work activity capability reports on a regular basis. The doctor is required to indicate the injuries and diagnoses being treated on these other reports and in billing records. As such, the insurance carrier should already be aware of the injuries sustained and be taking steps, in addition to this examination, to address those conditions for which it has concerns.

Pursuant to Labor Code §408.0042(g), this examination does not affect either the injured employee or insurance carrier's ability to request required medical examinations or designated doctor examinations. The insurance carrier may obtain a peer review or request a required medical examination or designated doctor examination to seek additional clarification on the injured employee's injuries in lieu of, or in addition to, this treating doctor examination. This examination does not affect the treating doctor's office visits for the purpose of treatment of diagnoses accepted by the insurance carrier.

Proposed subsection (a) relates to the scheduling of the examination. An insurance carrier electing to utilize this provision must contact the treating doctor and schedule an appointment for the injured employee. To provide the injured employee sufficient notice of the upcoming appointment, the examination should not be scheduled for a date earlier than 15 days from the date the request is sent, and the examination should be scheduled to take place on or before the 30th day after the request is sent. The Division has established a requirement that the examination may not be requested prior to the eighth day after the date of injury. This day was selected because it is the accrual date for indemnity in claims that begin experiencing lost time immediately following an on-the-job injury.

Proposed subsection (b) states the insurance carrier is responsible for ensuring it identifies the correct doctor with which to schedule the examination; therefore it is critical that the insurance carrier verify a doctor's role with the injured employee, the injured employee's Network or the Division prior to scheduling the examination. The examination shall be delayed until the correct doctor is identified should the injured employee indicate the doctor named on the notice is not the treating doctor. If an examination occurs and it is later determined that the doctor was not the treating doctor of record, the insurance carrier will still be liable for reimbursement of the examination and testing, but the results of this examination may not be used for the purpose of defining the compensable injury. An administrative penalty may also be assessed against the carrier for failure to confirm the correct treating doctor before scheduling the examination.

The injured employee should not attempt to change treating doctors after being informed the insurance carrier has scheduled this examination. If a change does occur, the timing of the doctor change will impact how the results of the examination will be considered. If a doctor change is requested prior to the examination request, the results of the examination from the previous treating

doctor may not be used to define the compensable injury. The insurance carrier may make a new request for an examination with the correct doctor. If the doctor change is requested after the examination request, the examination results will be valid because the results came from the treating doctor at the time the request was made.

Proposed subsection (g) addresses reporting by the treating doctor. Once the insurance carrier has scheduled the appointment, the treating doctor is required to perform the examination for the purpose of identifying all components of the compensable injury. The doctor is required to report specific diagnoses and to not leave any related diagnoses unreported, even if a condition is not being treated at the time of the examination. Any injury or diagnosis identified by the doctor that is not related to the compensable injury should not be included in the list of compensable injuries and diagnoses in this report. Non-related findings by the treating doctor may be included in the narrative section or in a separate medical report. The narrative section, used to give a brief discussion of the objective findings and how the diagnoses are related to the incident or activities that caused the work related injury or may have been precipitated or aggravated by the incident or activities causing the work related injury, is required for the report to be considered complete and valid.

The treating doctor is required to confirm any injury or diagnosis that may have occurred as a result of the work related incident or activities. The doctor shall not indicate that the injury cannot be diagnosed at the time of the examination, thereby deferring the compensable injury's definition. Should it be necessary to obtain diagnostic testing to rule out or confirm any diagnoses, the doctor shall refer the injured employee. A list of the required tests and the rationale for necessity must be clearly documented in the report's narrative to justify the additional filing days and any reimbursement. The concern about the potential number of early diagnostic tests is a matter the insurance carrier must evaluate before requesting a treating doctor examination to define the compensable injury based on the particular circumstances of the claim. If the insurance carrier requests the examination very early in the claim, it risks having a larger number of tests performed than would be necessary if the examination were to occur later in treatment when some of the possible diagnoses would have been ruled-out clinically. Doctors will also need to weigh the potential emotional effect multiple tests could have on an injured employee's recovery, especially early in the injury. Insurance carriers that are concerned about diagnostic testing not requiring preauthorization by rule should note that initial diagnostic testing generally does not require preauthorization.

Subject to waiver of a contest of compensability for failing to dispute the injury within 60 days pursuant to Labor Code §409.021 and §409.022, if the insurance carrier determines that a specific diagnosis is not related while the insurance carrier is reviewing the case and medical documentation during the course of claim management, this condition may be disputed using a plain language notice, PLN-1 or PLN-11, without utilizing this examination.

Proposed subsection (h) addresses the reimbursement rate for this examination. The reimbursement is \$350, equivalent to the reimbursement for a required medical examination. Participants felt that because this examination is for administrative purposes that require additional documentation and its results have significant bearing on the claim, it is deserving of a higher reimbursement than for treatment examinations. Testing necessary to de-

fine the compensable injury shall be reimbursed in accordance with the Medical Fee Guideline §134.202. Testing required to confirm or rule out a diagnosis is not subject to retrospective review for the issue of compensability if the tests were documented on the treating doctor's report with a rationale for their performance in defining the injury.

Proposed subsection (i) explains the insurance carrier's responsibilities when it has received notice that the treating doctor has submitted the findings from the examination on TXCOMP. After the doctor has submitted his findings online, the Division will notify the insurance carrier electronically that the report has been filed and the need for the insurance carrier to respond to those findings. The insurance carrier is required to indicate either acceptance or denial of each diagnosis listed by the treating doctor to avoid any future confusion regarding whether conditions were accepted or not.

If the insurance carrier chooses to deny only specific injuries without any additional liability issues, its online response to the treating doctor report is considered an extent of injury denial and will be a substitute for the PLN-11. The insurance carrier's narrative section shall comply with the requirements of §124.2.

Proposed subsection (k) requires preauthorization prior to treatment for a specific diagnosis if the insurance carrier disputes the relatedness of any specific diagnosis identified in the treating doctor examination. Labor Code §408.0042 links the preauthorization requirement to the diagnoses identified in the treating doctor examination report and specifically denied by the insurance carrier. This section will apply differently from network to network due to each network's preauthorization requirements.

Proposed subsections (j) and (l) address dispute resolution to adjudicate extent of injury issues identified when the insurance carrier denies specific diagnoses. An injured employee may initiate dispute resolution by requesting a Benefit Review Conference (BRC) before preauthorization has been denied, as it is likely the injured employee will be advised of the refusal of benefits before preauthorization is sought. The authority to initiate dispute resolution at this point derives from Labor Code §409.0021(a) that states if the insurance carrier refuses to pay benefits it must advise the employee of the right to request a BRC and how to obtain additional information. A benefit is defined in Labor Code §401.011 as medical, income, or death benefits.

The healthcare provider's authority to pursue extent of injury and initiate dispute resolution does not occur until treatment has been rendered and reimbursement denied, as established by Labor Code §409.009, or when the provision of Labor Code §408.0042(d), allowing a healthcare provider to seek dispute resolution after preauthorization has been denied, is met.

Proposed subsection (m) addresses the review of treatment for those injuries accepted as part of the compensable injury after the treating doctor has defined the injury. While §408.0042 does not allow the insurance carrier to reopen the issue of compensability of any diagnosis accepted as a result of this examination for the purposes of medical treatment review, other Labor Code provisions indicate rare circumstances where an insurance carrier may reopen the issue of compensability, ultimately affecting an insurance carrier's liability for treatment.

Once the examination has been performed and the injury is defined, any new diagnoses that arise in the future will be handled as extent of injury issues, which require an insurance carrier to file a PLN-11, and follow that process pursuant to applicable statutory and rule provisions. The doctor shall not withhold any



diagnosis identifiable at the time of the examination from the report in order to change the way treatment may be handled.

The process for defining the compensable injury under Labor Code §408.0042 and this rule does not change the insurance carrier's contest/denial requirements under Labor Code §409.021, §409.022, and applicable rules. An insurance carrier waives the right to contest compensability of a claim if it does not file its contest/denial with the Division within 60 days after receiving written notice of the claim under §409.021, §409.022, and applicable rules. An insurance carrier cannot remove as part of the compensable injury those injuries and diagnoses that become established as part of the compensable injury by the carrier's failure to contest compensability of the claim under §409.021 and §409.022. The insurance carrier retains the right to dispute any findings from the report that were not identifiable within the 60-day waiver period.

The Division is developing an online reporting system in TXCOMP. At each phase of the process, the appropriate participant will log into TXCOMP to input the required information. The Division will send out a final summary consisting of the treating doctor's findings and the insurance carrier's response to the injured employee, the injured employee's representative (if any), the treating doctor, and the insurance carrier. The information at each stage of the process will be accessible online to those with appropriate TXCOMP access and will be maintained as part of the historical record of the claim.

Heidi Jackson, Director, Claims Services, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Jackson has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be that when the examination is requested by the insurance carrier, the injured employee is likely to have an earlier and concrete notice of the insurance carrier's acceptance or denial of an injured employee's compensable injury. The costs to an injured employee will be the costs associated with attending the examination, such as transportation costs. The costs to insurance carriers depends on the frequency the carrier requests an examination with a treating doctor. Each time a carrier requests an examination to define the compensable injury, the carrier will incur the \$350 treating doctor fee and the costs associated with any necessary diagnostic testing to define the compensable injury. Carriers may also incur administrative costs for someone to coordinate with the treating doctor in scheduling the examination and reviewing the treating doctor's report via TXCOMP. Carriers will also realize a cost for providing the notice of the examination to the injured employee. Carriers may ultimately realize a positive financial impact by utilizing this provision to define the compensable injury to resolve older, problematic claims. Carriers may also benefit from receiving: earlier notice of the injury, more information on the compensable injury, and ultimately more information on their liability. When carriers request this examination, the treating doctor will realize the \$350 examination fee and health care providers will have more certainty that treatment rendered will be paid because the insurance carrier has identified in advance those conditions that are compensable. Health care providers may incur additional administrative costs in coordinating with carriers in scheduling this examination. Health care providers may incur additional administrative

costs in data entry of the treating doctor's report via TXCOMP. The treating doctor fee has been increased to \$350 in anticipation and to help offset this cost. Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because the Labor Code requires equal application of these provisions to all affected individuals. However, since it is within the carrier's discretion as to whether or not to request this examination, the carrier is able to decide when and whether it is appropriate to request the examination.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006 to Norma Garcia, General Counsel, Mail Stop 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Heidi Jackson, Director, Claims Services, Mail Stop 30, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

The new section is proposed pursuant to Labor Code §§408.0042, 402.00111, and 402.061. Section 408.0042 requires the Division to have an injured employee submit to a single treating doctor examination on request of an insurance carrier. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of the State. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Statute Texas Labor Code §§409.021, 409.022, and 408.0042.

§126.14. Treating Doctor Examination to Define the Compensable Injury.

(a) On request of the insurance carrier, an injured employee is required to submit to a single examination per claim for the purpose of defining the compensable injury. The examination:

(1) shall not be requested prior to the eighth day after the date of injury, and

(2) shall be scheduled to occur no earlier than 15 days and no later than 30 days from the date the notice is sent to the injured employee.

(b) The insurance carrier shall verify the injured employee's treating doctor prior to scheduling the examination.

(1) Failure to verify an injured employee's treating doctor or failure to notify the Division in writing of a correction regarding the identity of the injured employee's correct treating doctor shall result in an administrative violation. An insurance carrier that schedules the examination with a doctor other than the injured employee's treating doctor shall be liable for reimbursement of the examination and testing. The results of the improper examination shall not be used for the purpose of defining the injury.

(2) If a request to change treating doctor has been filed by the injured employee, the insurance carrier shall not request this examination until after the treating doctor change has been processed.

(c) The insurance carrier shall send the injured employee a notice of appointment, which at a minimum shall include:

(1) general information identifying the claim;

(2) the name of the treating doctor;

(3) the date, time, and the location of the scheduled examination with the treating doctor named; and

(4) the following statements in a bold font equal to the font size in the main body of the notice:

(A) The insurance carrier may request that you, the injured employee, attend a single examination per claim for the sole purpose of defining the compensable injuries that resulted from the work-related incident or activities.

(B) The law requires this examination be scheduled with your treating doctor. If the doctor named in this notice is not your treating doctor, immediately contact the insurance carrier or the Texas Department of Insurance, Division of Workers' Compensation. You are not required to attend the examination until the correct treating doctor has been identified and the insurance carrier reschedules the appointment with the correct doctor.

(C) You, the injured employee, are responsible for contacting your doctor to reschedule the appointment if you have a conflict with the date and time that has been scheduled for you. If you fail to attend the examination at the time scheduled/rescheduled without good cause, an administrative penalty may be assessed.

(d) Required information for the notice shall be entered online into TXCOMP. The final summary screen shall be printed as the notice of appointment. A copy of the notice shall be sent to the injured employee, the injured employee's representative (if any), and the Division. The notice shall be provided to the injured employee no later than 10 days prior to the examination.

(e) If a scheduling conflict exists, the injured employee shall immediately contact the treating doctor to reschedule the appointment. The appointment must be rescheduled to take place within seven working days of the original appointment.

(f) An injured employee who fails or refuses to appear at the time scheduled for an examination may be assessed an administrative penalty unless good cause exists for such failure. An injured employee who fails to submit to an examination at the insurance carrier's request does not commit an administrative violation if the doctor named on the notice is not the injured employee's treating doctor.

(g) The treating doctor, after conducting the examination, shall submit a report online via TXCOMP no later than 10 days after the conclusion of the examination. To be considered a complete and valid report, the report must contain, at a minimum, general information that identifies the claim; a description of the mechanism of injury; a list of diagnostic testing performed, with the documented rationale for necessity; and specific, confirmed diagnoses that the doctor considers to be related to the compensable injury along with an explanation of how each diagnosis is related. Should additional testing be required to establish a diagnosis:

(1) the filing of the treating doctor's report is extended seven days after the testing is completed to allow for receipt and review of the reports from outside testing sources; and

(2) the testing necessary to define the compensable injury shall be performed no later than 10 working days after the examination and is not subject to preauthorization requirements.

(h) A treating doctor may bill, and the carrier shall reimburse for an examination required under this section. Treating doctors shall bill for the examination using the Healthcare Common Procedure Coding System (HCPCS) Level I code, Evaluation and Management Section, for work-related or medical disability evaluation services performed by a treating physician. A Division modifier of "TX" shall be added to the Level I code. Doctors are not required to submit a copy of the report with the bill if the report was previously provided to the carrier. Reimbursement for the examination shall be \$350. Reimbursement for the report is included in the examination fee. Testing necessary to define the compensable injury shall be billed using the appropriate billing codes and reimbursed, in addition to the examination fee, in accordance with §134.202 of this title (relating to Medical Fee Guideline). Reimbursement for testing shall only be retrospectively reviewed on a medical necessity or fee basis.

(i) An insurance carrier shall indicate the injuries and diagnoses identified in the treating doctor's report that are being accepted or disputed within the later of 60 days of the date written notice of the injury is received or within 10 working days of receipt of the treating doctor's report. The insurance carrier will accept or deny the injuries and diagnoses identified in this examination online via TXCOMP. Any notification of denial must include a plain language statement, pursuant to §124.2 of this title (related to Carrier Reporting and Notification Requirements), explaining the insurance carrier's rationale for denial.

(1) In addition to the injuries and diagnoses accepted by the insurance carrier as a result of this examination, the compensable injury includes all injuries, diagnoses, symptoms and conditions that could have been reasonably discovered in an investigation by the insurance carrier prior to the expiration of the 60-day waiver period and not denied as required under Labor Code §409.021, §409.022, and applicable Division rules. The insurance carrier may not use this examination to dispute the compensable injury that was defined by the 60-day waiver period.

(2) The insurance carrier shall not deny reimbursement for treatment of any diagnosis listed in the treating doctor's report on the basis of compensability or relatedness in the time between receipt of the doctor's findings and the filing of its denial of the specific diagnosis, until a compensability denial, submitted in accordance with §124.2 of this title, is submitted to the Division and the treating doctor.

(j) The injured employee may initiate a request for a benefit review conference in accordance with Labor Code §410.023(a) and §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference) upon receiving a denial regarding specific injuries or diagnoses.

(k) If the insurance carrier denies an injury or diagnosis identified in this examination, treatment for that injury or diagnosis must be preauthorized prior to treatment occurring, except as provided under Chapter 1305, Insurance Code and applicable Texas Department of Insurance rules. For the treating doctor, the insurance carrier's denial is effective on the date the notice of denial is received by that doctor.

(l) A health care provider may request a benefit review conference, in accordance with §141.1 of this title, to address an extent of injury question if:

(1) a request for preauthorization under this section has been denied;

(2) the injured employee is not pursuing the claim; and

(3) an agreement, filed in accordance with §147.4 of this title (relating to Filing Agreements with the Commission, Effective Dates) has not been entered into by the insurance carrier and injured employee establishing insurance carrier's liability on the disputed issues.

(m) Once the treating doctor has defined the compensable injury and the insurance carrier has accepted injuries or diagnoses as related, the insurance carrier shall not review treatment of the accepted injuries and diagnoses for compensability.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4288



## CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

### 28 TAC §130.2, §130.6

The Texas Department of Insurance, Division of Workers' Compensation, proposes amendments to §130.2 and §130.6 concerning certification of maximum medical improvement (MMI) and designated doctor examinations for MMI. The proposed amendments are necessary to implement changes to the Labor Code §§408.123 and 408.0041 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

HB 7 changed the Labor Code §408.123 to require the treating doctor to provide information to the injured employee (employee) on how to dispute a certification of maximum medical improvement and the assignment of an impairment rating. The proposed amendments to §130.2 set forth the process for the treating doctor to provide the notification to the employee. Given that these certifications can occur in both network and non-network settings, this additional notification ensures that the employee is provided accurate information to resolve any potential disputes as soon as reasonably possible. In the event that the doctor does not make the certification during the examination, usually due to the need for additional testing or review of the medical records, this notice will be provided to the employee along with the Report of Medical Evaluation through the processes outlined in §130.1.

The proposed amendments to §130.6 address changes made to the Labor Code §408.0041. The proposed amendments to §130.6 delete the procedures set forth in subsections (a) - (c) and (h) - (k) since these have been moved, with modifications as appropriate, to proposed new §126.7 which is published elsewhere in this issue of the *Texas Register*. New §126.7 addresses designated doctor exams in general. The proposed amendments

to subsection (b) require a designated doctor, who determines the employee has not reached maximum medical improvement (MMI) and issues a prospective date of MMI that is less than 60 days from the date of the exam, to reschedule the exam on or after the prospective date of MMI without any action of the Division. The designated doctor is limited to one rescheduled exam. The doctor is also required to notify the Division and the insurance carrier of the rescheduled exam. The proposed amendments to subsection (f) provide that when the designated doctor issues multiple impairment ratings due to an unresolved dispute over the extent of the employee's compensable injury, the carrier shall pay benefits based on the conditions that have been accepted by the carrier or have been finally adjudicated by the Division to be part of the compensable injury. The Division has made changes throughout the proposal to reflect language changes of "commission" to "Commissioner" or "Division" as appropriate. The Division has proposed for repeal §§126.7, 130.5 and 130.110 which are published elsewhere in this issue of the *Texas Register*.

Brent Hatch, Director, Central Claims Management and Customer Services, has determined that for the first five-years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Hatch has also determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the sections will be compliance with and implementation of legislative directives and consistency in the rules under which all Texas Workers' Compensation System participants function.

The anticipated benefit to employees will be the consistent manner in which designated doctor exams are to be conducted. Additionally, with automatic rescheduling of designated doctor exams when a prospective date of MMI or return-to-work is issued, the employee will be able to obtain access to the designated doctor easier and faster in an effort to resolve benefit related issues. The employee should benefit due to the early notice of a determination of MMI/IR and the knowledge that he or she may dispute the rating. It is anticipated that employees will experience no additional costs.

The benefit to insurance carriers will be quicker resolution of disputes, which should reduce the potential for overpayments, thus reducing costs. In addition, the companion changes being made to Chapters 180 and 130 regarding training of designated doctors, certification of MMI/assignment of impairment ratings, and easier access to designated doctors should reduce costs through fewer examinations and fewer disputes.

Employers should benefit to the extent that the reductions in costs may translate to savings in premiums, and from timely return to work of employees.

Health care providers should benefit from the clarification in the rules. They may experience increased training costs associated with these proposed rules and the Chapter 180 rules concurrently proposed. Training costs are estimated to be approximately \$500 to attend the initial required designated doctor training and testing. The bi-annual training costs are also estimated to be approximately \$500. While the new provision in §130.2 places an additional administrative requirement on the treating doctor, the information required in the notice to the employee is

structured in a manner to minimize costs and other impacts to the health care provider. Depending on their individual office practices and the volume of workers' compensation patients, the doctor's office could mass-produce this notice for easy distribution at a minimal cost impact. It is anticipated that this extra expense would be no more than \$.50 - \$1.00 per employee certification based on the cost of the paper/copier supplies and staff time to fill out the notice.

Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because all employees need to receive the required notification and the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006 to Norma Garcia, General Counsel, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Brent Hatch, Director, Central Claims Management and Customer Services, MS-600, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

The amendments are proposed under the Labor Code §§408.0041, 402.061, and 402.00111. Section 408.0041 provides for designated doctor examinations. Section 402.061 requires the Commissioner to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State.

The following statute is affected by this proposal: Statute Labor Code §408.0041

*§130.2. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor.*

(a) A treating doctor shall either examine the injured employee (employee) and determine if the employee has any permanent impairment as a result of the compensable injury as soon as the doctor anticipates that the employee will have no further material recovery from or lasting improvement to the work-related injury or illness, based on reasonable medical probability, or have another authorized doctor do so.

(1) - (2) (No change.)

(3) At the conclusion of an examination in which the treating doctor, or the certifying doctor in the event that the treating doctor is not authorized to certify MMI and assign an impairment rating, determines that the employee has reached maximum medical improvement and assigns an impairment rating, the doctor shall provide the employee with a written notice that the certification may be disputed. If, based upon the need for additional testing or review of medical documentation, the date of MMI and the impairment rating are not determined

and assigned during the examination, the notice shall be sent with the Report of Medical Evaluation provided in accordance with §130.1 of this title. The notice shall include the following information:

(A) the date of maximum medical improvement;

(B) the assigned impairment rating;

(C) a statement that if the employee disagrees with the certification, they may dispute the certification by contacting the Division of Workers' Compensation;

(D) the address and phone number of the local field office of the Division of Workers' Compensation; and

(E) a statement that the employee may contact the Division for more information at 1 (800) 252-7031.

(b) A certification of MMI and assignment of an impairment rating shall be performed and reported in accordance with the requirements of §130.1 of this title.

(c) The Division ~~[commission]~~ shall mail a notice to a treating doctor on the expiration of 98 weeks from the date the employee's TIBs began to accrue if the employee is still receiving TIBS. The Division's ~~[commission's]~~ notice shall advise the treating doctor of the requirements under Chapter ~~[chapter]~~ 408, Subchapter G of the Texas Workers' Compensation Act, and of this rule, and require that an impairment rating report be mailed to the Division ~~[commission]~~ no later than 104 weeks from the date temporary income benefits began to accrue. A copy of the notice shall be sent to the employee as well.

(d) Upon receipt of the Division's ~~[commission's]~~ notice required in subsection (c) of this section, the treating doctor shall schedule and conduct an examination of the employee in accordance with §130.1 of this title to certify a MMI date (if earlier than the statutory MMI date as defined in §130.4 of this title (relating to Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified) and to assign an impairment rating. A treating doctor who is not authorized to certify MMI and assign impairment ratings, shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor.

(e) If the carrier has not received a report of medical evaluation by the date of statutory MMI:

(1) (No change.)

(2) the carrier or the employee may request the appointment of a designated doctor under §126.7 ~~[§130.5]~~ of this title (relating to Designated Doctor Examinations: Requests and General Procedures ~~[Entitlement and Procedure for Requesting Designated Doctor Examinations related to Maximum Medical Improvement and Impairment Rating]~~); and/or

(3) (No change.)

*§130.6. Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings.*

(a) ~~[A designated doctor examination for maximum medical improvement (MMI) and/or permanent whole body impairment shall be conducted in accordance with this section. ]~~

~~[(4)]~~ Any evaluation relating to either maximum medical improvement (MMI) ~~[MMI]~~, an impairment rating or both shall be conducted in accordance with §130.1 of this title ~~[section]~~ (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

~~[(2)]~~ The opinion of the designated doctor is given presumptive weight regarding MMI and impairment but only on the issue(s) in question or dispute. If the report contains the doctor's opinion re-

garding other issues (even those the commission has requested the doctor to consider); that portion of the opinion does not have presumptive weight.]

{(b) The designated doctor and the injured employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the injured employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within fourteen days of the originally scheduled examination unless an extension is granted by the commission's field office. Within 24 hours of rescheduling, the designated doctor shall contact the commission's field office and the insurance carrier with the time and date of the rescheduled examination.}

{(c) An insurance carrier may suspend temporary income benefits (TIBs) if an injured employee, without good cause, fails to attend a designated doctor examination.}

{(1) In the absence of a finding by the commission to the contrary, an insurance carrier may presume that the injured employee did not have good cause to fail to attend the examination if:}

{(A) by the day the examination was originally scheduled to occur the injured employee has both:}

{(i) failed to submit to the examination; and}

{(ii) failed to contact the designated doctor's office to reschedule the examination to occur no later than the later of the fourteenth day after the originally scheduled examination date or the doctor's first available appointment date; or}

{(B) after rescheduling the examination as provided in subsection (c)(1)(A)(ii) of this section, the injured employee failed to submit to the rescheduled examination.}

{(2) If, after the insurance carrier suspends TIBs pursuant to this section, the injured employee submits to the designated doctor examination, the insurance carrier shall reinitiate TIBs as of the date the injured employee submitted to the examination unless the report of the designated doctor indicates that the injured employee has reached MMI. The re-initiation of TIBs shall occur no later than the seventh day following the latter of:}

{(A) the date the insurance carrier was notified that the injured employee had attended the examination; or}

{(B) the date that the insurance carrier was notified that the commission found that the injured employee had good cause for failure to attend the examination.}

{(3) An injured employee is not entitled to TIBs for a period during which the insurance carrier suspended benefits pursuant to this section unless the injured employee later submits to the examination and the commission finds or the insurance carrier determines that the injured employee had good cause for failure to attend the examination.}

{(b) [(d)] The designated doctor shall address the issue(s) in question and any issues the Division [eommission] may request the designated doctor to consider and confine the report [as described in subsection (h) of this section] to only those issues.

(1) When there has been no prior certification of MMI, the designated doctor shall evaluate the injured employee (employee) for MMI, and if the doctor finds that the [injured] employee reached MMI, assign an impairment rating. If the designated doctor finds that the [injured] employee has not reached MMI, the doctor shall identify the reason that the designated doctor does not believe the [injured] employee

to have reached MMI, and estimate the date that the [injured] employee will reach MMI.

(2) When there has been a prior certification of MMI and impairment rating and only the MMI date is in question, the designated doctor shall evaluate the date the [injured] employee reached MMI and shall not assign an impairment rating. If the certification of MMI in question was the treating doctor's certification and the designated doctor finds that the [injured] employee either was not at MMI or reached MMI on a date later than the treating doctor's certification [doetor], the designated doctor shall provide an explanation with clinical documentation to support why the [injured] employee had not reached MMI as of the date certified by the treating doctor.

(3) When the impairment rating is the only issue in question, the doctor shall assign an impairment rating based on the employee's medical condition on [without regard to] the MMI date.

(4) When MMI and permanent whole body impairment are in question and the designated doctor determines that the [injured] employee has not reached MMI, the designated doctor shall not assign an impairment rating. If the prospective MMI date is within 60 days of the date of the examination, the doctor shall schedule a second examination in accordance with §126.7 of this title (relating to Designated Doctor Examinations: Requests and General Procedures). [Otherwise, the doctor shall certify MMI and assign an impairment rating.}

(5) When the extent of the injury may not be agreed upon by the parties (based upon documentation provided by the treating doctor and/or insurance carrier or the comments of the [injured] employee regarding his/her injury), the designated doctor shall provide multiple certifications of MMI and impairment ratings that take into account the various interpretations of the extent of the injury so that when the Division [eommission] resolves the dispute, there is already an applicable certification of MMI and impairment rating from which to pay benefits as required by the Act [statute].

(c) [(e)] When performing range of motion testing, if the AMA Guides specify [specifies] that additional testing be performed because of consistency requirements, the designated doctor shall reschedule testing within seven days of the first testing unless there is no clinical basis for retesting and then the designated doctor shall document this in the narrative notes with the clinical explanation for not recommending re-examination.

(d) [(f)] Range of motion, sensory, and strength testing should be performed by the designated doctor, when applicable. If this testing is not performed by the designated doctor, the health care provider performing the testing must have successfully completed Division [eommission]-approved training, must not have previously treated or examined the [injured] employee within the past 12 months, and must not have [not] examined or treated the [injured] employee with regard to the medical condition being evaluated by the designated doctor. Use of another health care provider to perform testing under this subsection shall not extend the amount of time the designated doctor has to file the report and the designated doctor is responsible for ensuring that the requirements of this chapter are complied with.

(e) [(g)] For testing other than that listed in subsection (d) [(f)] of this section, the designated doctor may perform additional testing or refer [injured employees] the employee to other health care providers when deemed necessary to assess an impairment rating. Any additional testing required for the evaluation and rating, is not subject to preauthorization requirements in accordance with the Texas Labor Code, §413.014 (relating to Preauthorization) and additional testing must be completed within seven working days of the designated doctor's physical examination of the [injured] employee. Use of another health care provider to perform testing under this subsection can extend the amount

of time the designated doctor has to file the report by seven working days.

(f) If the designated doctor provided multiple certifications of MMI/impairment ratings by operation of subsection (b)(5) of this section, the insurance carrier shall pay benefits based on the conditions that have not been disputed, or have been finally adjudicated by the Division, to be part of the compensable injury.

[(h) The designated doctor shall complete and file a Report of Medical Evaluation in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) and 130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by A Doctor Other Than The Treating Doctor).]

[(i) The designated doctor shall respond to any commission requests for clarification not later than the fifth working day after the date on which the doctor receives the commission's request. The doctor's response is considered to have presumptive weight as it is part of the doctor's opinion. If, in order to respond to the request for clarification, the designated doctor has to re-examine the injured employee, the doctor shall:]

[(1) make him/herself available to conduct the reexamination within 10 working days of receiving the request (even if it means traveling back to the location of the original examination); and]

[(2) respond to the request for clarification not later than the fifth working day following the reexamination.]

[(j) The designated doctor shall maintain accurate records, including the injured employee records, analysis (including supporting information), and narratives provided by the insurance carrier and treating doctor, to reflect:]

[(1) the date and time of any designated doctor appointments scheduled with injured employees;]

[(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled;]

[(3) the date of the examination;]

[(4) the date medical records were received from the treating doctor or any other person or organization;]

[(5) the date the medical evaluation report was submitted to all parties in accordance with §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment);]

[(6) the name of all referral health care providers, date of appointments and reason for referral by the designated doctor; and]

[(7) the date the doctor contacted TWCC for assistance in obtaining medical records from the insurance carrier or treating doctor.]

(k) The insurance carrier shall pay any accrued income benefits, and shall begin or continue to pay weekly income benefits, in accordance with the designated doctor's report for the issue(s) in dispute, no later than five days after receipt of the report or five days after receipt of an order by the commission, whichever is earlier. If the designated doctor provided multiple certifications of MMI/impairment ratings by operation of subsection (d)(5) of this section, the insurance carrier shall pay using the certification/rating assigned based on the conditions that the insurance carrier believes are part of the compensable injury.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4288



## CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

The Texas Department of Insurance, Division of Workers' Compensation proposes repeal of §130.5 and §130.110 concerning impairment and supplemental income benefits. The repeals are necessary to implement changes to the Labor Code §408.0041 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

HB 7 changed the Labor Code §408.0041 by expanding the list of issues that a designated doctor may be asked to address to include the injured employee's (employee) ability to return to work, the extent of the injury, whether the employee's disability is a direct result of the injury and similar issues. As a result of the change, the designated doctor will now be asked to address issues that may affect the delivery of income benefits in general, rather than just impairment income benefits (IIBs) as is currently the case. In response to this change, §130.5 is proposed for repeal as the process for entitlement to, and request for, a designated doctor, applies to benefits in general, and the process for entitlement to and request for a designated doctor have been moved to proposed new §126.7. Additionally, §130.110 is proposed for repeal due to the changes in §408.0041 regarding designated doctor examinations regarding the ability of the employee to return to work. The process for, entitlement to, and requesting a designated doctor exam regarding the employee's ability to return to work after the second anniversary of entitlement to supplemental income benefits (SIBs) is also addressed in proposed new §126.7. The combination of repealed §§130.5 and 130.110 into proposed new §126.7 will also provide consistency throughout the designated doctor process regardless of the issue being addressed. Amendments to §§126.5 and 126.6 and proposed new §126.7 are published elsewhere in this issue of the *Texas Register*.

Brent Hatch, Director, Central Claims Management and Customer Services, has determined that for each year of the first five years the proposed repeals are in effect, there will be no fiscal impact to state and local governments as a result of the repeals. There will be no measurable effect on local employment or the local economy as a result of the proposed repeals.

Mr. Hatch has also determined that for each year of the first five years the proposed repeals are in effect the public benefits anticipated as a result of the repeals will be compliance with and implementation of legislative directives and consistency in the rules under which all Texas Workers' Compensation System participants function.

The anticipated benefit to employees, insurance carriers and health care providers is the centralization of direction and guidance regarding entitlement to, requesting, and selection of designated doctors, and consistency in the process for submission

of medical documentation and analyses to the designated doctor by the insurance carrier and treating doctor.

Employers should benefit to the extent that the reductions in costs may translate to savings in premiums, and from timely return to work of employees. There are no anticipated costs as a result of the proposed repeals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006 to Norma Garcia, General Counsel, Division of Workers' Compensation, MS-4D, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Brent Hatch, Director, Central Claims Management and Customer Services, Division of Workers' Compensation, MS-600, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

## SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

### 28 TAC §130.5

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Labor Code §§408.0041, 402.00111 and 402.061. Section 408.0041 provides for designated doctor examinations. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following section is affected by this proposal: Statute Labor Code §408.0041.

*§130.5. Entitlement and Procedure for Requesting Designated Doctor Examinations related to Maximum Medical Improvement and Impairment Rating.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

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Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4288



### 28 TAC §130.110

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or*

*in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Labor Code §§408.0041, 402.00111 and 402.061. Section 408.0041 provides for designated doctor examinations. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following section is affected by this proposal: Statute Labor Code §408.0041.

*§130.110. Return to Work Disputes During Supplemental Income Benefits; Designated Doctor.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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## CHAPTER 133. GENERAL MEDICAL PROVISIONS

### SUBCHAPTER G. ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION

#### 28 TAC §133.500, §133.501

The Texas Department of Insurance, Division of Workers' Compensation proposes new Subchapter G, §133.500 and §133.501, concerning electronic medical billing, reimbursement, and documentation. The sections are necessary to support the electronic exchange of medical billing and reimbursement data and documentation in the workers' compensation system.

Currently the majority of medical bills in the workers' compensation system are submitted by health care providers on paper forms to insurance carriers, third-party administrators, or medical bill review vendors. Minimal electronic billing occurs in the system. Insurance carriers report professional and hospital bill payment data to the Division in electronic file formats developed specifically for Texas' workers' compensation. The Division is transitioning from a Texas specific format to a national standard format that will collect pharmacy and dental data as well as professional and hospital data.

House Bill (HB) 2511, enacted by the 76th Legislature, added Texas Labor Code §401.024, which set goals for paper reduction in the workers' compensation system. Paper medical bills and related medical documentation account for the majority of paper exchanged in the Texas workers' compensation system. Provisions of HB 2511 allow the Division to adopt rules to permit

or require electronic transmission in place of established forms, manner, or procedures that require paper processing. HB 7, enacted by the 79th Legislature, Regular Session, added Texas Labor Code §408.0251, which requires the Division to adopt rules regarding the electronic submission and processing of medical bills from health care providers to insurance carriers.

Approximately six to eight million paper medical bills are processed annually in the Texas workers' compensation system. Initial estimates indicate a potential for significant reductions in the administrative costs and handling time for medical bill processing. The proposed new sections are part of the Division's Electronic Billing and Reimbursement (eBill) project initiated to identify and implement an electronic billing solution for the Texas workers' compensation system. eBill processing includes the method of transmission; components of the transactions being transmitted; and the structure, organizations, systems, or applications enabling the transmissions. The eBill project is a component of the Division's Business Process Improvement initiative; a coordinated set of projects that use technology to streamline agency processes to meet the goals set out in HB 2511.

Proposed Subchapter G encompasses the processes and methods for transmitting electronic medical bill data and documentation related to electronic medical bills between the Division, health care providers, and insurance carriers. The proposed rules establish the method of transmission and the required elements in an electronic transaction. The format and data collected improve the data integrity of the data collected by the Division and exchanged by system participants. The data collected is used to administer statutory mandates, such as compliance and practices, fee guideline development, and monitor the effect of networks in the workers' compensation system. The proposed rules are subject to the specific provisions of Chapters 133 and 134 to determine medical bill processing and reimbursement.

Proposed §133.500 specifies the use of specific national standard formats, national implementation guides, and Division implementation guides for transmitting electronic medical bill data and associated transactions between the Division, health care providers, and insurance carriers. This allows the Division to define the elements required in a transaction, the applicable code sets, and data edits by reference to the national and Division implementation guides. The proposed section provides flexibility to exchange data in non-prescribed formats when mutually agreed upon by a health care provider and an insurance carrier. The data elements, code sets, and edits in non-prescribed formats must conform to requirements in Division prescribed formats which will allow flexibility to respond to participants needs while ensuring consistency.

Proposed §133.501 establishes the exclusive process to exchange medical bill and reimbursement data between the Division, health care providers, and insurance carriers. This proposed section establishes applicability, the effective date for electronic billing, and includes provisions that allow health care providers and insurance carriers to contract with other entities to process electronic medical bill data. The proposed section also includes waiver provisions for health care providers and insurance carriers. The waiver provision exempts health care providers or insurance carriers from the requirement to exchange medical bill data exclusively by electronic means if implementing electronic medical bill processing would cause an unreasonable financial burden. A health care provider whose workers' compensation business constitutes less than 10 percent of their practice and employs 10 or fewer full time

employees qualifies for a waiver. The intent of the provision is to quantify 10 percent of a practice to include patient volume, bill volume, and dollar volume. This section does not establish an administrative process for health care providers to obtain a waiver. If a health care provider uses the paper billing process, their billing practices may be reviewed by the Division for compliance with the waiver provision. Insurance carriers may qualify for a waiver on a case-by-case basis as determined by the Division. The intent of the insurance carrier waiver provision is to ensure that an insurance carrier is waived from the electronic billing requirements if implementing electronic medical bill processing causes an unreasonable financial burden.

Proposed §133.501 defines an electronic medical bill and the components of a complete electronic medical bill. The proposed section limits the submission of duplicate electronic medical bills by health care providers. This section also establishes an acknowledgment process for the receipt of an electronic medical bill. The acknowledgment process is not an admission of insurance carrier liability. The acknowledged acceptance of a complete medical bill does not prohibit an insurance carrier from subsequently rejecting an accepted electronic medical bill based on limited or contested liability.

Proposed §133.501 also includes provisions for electronic remittance notification from insurance carriers to health care providers that comply with Division rules regarding payment or denial of a medical bill, recoupment request, or acknowledgment of receipt of a refund. An electronic remittance notification must be issued no later than 45 days after receipt of a complete electronic medical bill or within 5 days of generating a payment. The Division recognizes that in an electronic process, a payment and the electronic remittance notification may not be issued at the same time. The intent is to ensure that there is not an unreasonable delay between the payment and the electronic remittance notification.

Proposed §133.501 establishes a process for electronically exchanging documentation associated with electronic medical bills by defining the method of transmission and adopting a standard electronic format. This section does not designate documentation as a component of a complete electronic medical bill because the proposed prescribed electronic billing formats do not support electronic documentation in the same billing transaction. Chapter 134 and previous subchapters of Chapter 133 establish documentation requirements related to health care services provided.

Joseph Montoya, Acting Program Manager, Business Process and Improvement, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Montoya has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of the proposed sections will be a reduction in the amount of paper exchanged related to medical bill processing, an overall decrease in the administrative costs to health care providers and insurance carriers, a shorter turn around time frame for receiving and processing medical bills, an increase in data integrity, and a decrease in certain types of billing disputes.

Insurance carriers reported 4.5 million bills to the Division of Workers' Compensation in calendar year 2005, which represents an estimated \$3.2 million in total annual postage cost to



the system, with \$1.6 million annually allocated to health care providers for submissions of bills and \$1.6 million allocated to insurance carriers to mail explanation of benefits (EOBs). The California Commission on Health and Safety and Workers' Compensation White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California, July 2004 references the Ohio state workers' compensation analysis of costs to process a payment by check (\$2.50) versus an electronic transfer (4.5 cents). The analysis also indicates that the state of California Department of Health and Human Services estimates that the state might save more than \$1 on every state warrant that is converted to electronic funds transfer. Based on discussions with insurance carriers in the Texas workers' compensation system, the Texas Department of Insurance Research and Evaluation Group estimates that insurance carrier's cost to process a medical bill through payment is \$8 per bill (from receipt of bill through generation of payment/EOB). Based on California and Ohio estimates, the cost for insurance carriers to generate and distribute payments for medical bills is conservatively estimated at more than \$5 million dollars annually, \$2.50 per payment for half of the 4.5 million bills. Based on the California study, if Texas insurance carriers submit 20 percent (450,000) of their payments by electronic funds transfer rather than paper checks the total savings can be an estimated at \$450,000 annually.

In addition to reduction in postage and check generation costs, it is further expected that insurance carriers will obtain savings in the following areas by implementation of electronic medical billing and funds transfer: eliminate manual screening and processing of mail to return bills to the provider; eliminate Optical Character Recognition (OCR) and/or imaging system scanning and data correction; eliminate manual data entry; eliminate paper EOBs; reduce the number of incomplete and duplicate bill submissions; and reduce paper storage, recycling, and disposal costs. Start up costs to implement electronic billing solutions by health care providers and insurance carriers is estimated to be \$500,000. This includes hardware costs, programming costs, and vendor implementation fees. The estimated cost is comparable to the implementation costs for similar electronic interfaces initiated by insurance carriers and other organizations. The implementation cost is expected to be offset by the savings achieved within the first two years after implementation. A goal of the Electronic Billing and Reimbursement Project is that the electronic billing model adopted and implemented ensures the cost to system participants to exchange electronic transactions is between 6 and 25 cents per transaction. Generally, at least four transactions are associated with a complete electronic medical bill: health care provider sends electronic medical bill to a clearinghouse, clearinghouse sends acknowledgment to the health care provider, clearinghouse sends electronic medical bill to the insurance carrier, and insurance carrier sends electronic EOB to the health care provider or clearinghouse. An average cost to an insurance carrier to receive a paper medical bill is between \$2 and \$5 per bill, which results in a total cost between \$9 and \$22.5 million annually to the Texas workers' compensation system. The ongoing administrative costs to insurance carriers for electronic billing and reimbursement is expected to be 60 to 80% less than the average cost of paper processing and save \$5.4 million annually.

Health care providers who are not already exchanging data electronically may experience an initial cost to implement electronic interface. It is expected that any start-up costs will likely be offset by a decrease in overall administrative costs for generating

and processing paper medical bills and documentation. Health care providers are expected to experience a decrease in the administrative costs of medical bill processing based on savings achieved in existing electronic billing models in the Medicare, group health environments, and other workers' compensation jurisdictions. It is expected that national standard formats, standard code sets, and national standard edits paired with Division-established edits will result in a higher medical bill acceptance rate and a decrease in certain types of billing disputes. Other benefits expected for health care providers as a result of electronic medical billing and reimbursement are shorter time frames for bill processing and reimbursement.

Insurance carriers, including certified self-insured employers, which are not already exchanging data electronically, may experience start-up costs to implement their electronic interface. It is expected these initial costs will be offset by a decrease in overall administrative costs for generating and processing paper medical bills and documentation. Insurance carriers, including certified self-insured employers, are expected to experience a decrease in the administrative cost of medical bill processing by eliminating: paper processing, screening and scanning processes; manual return to provider bill processing; manual data entry; and data validation. Electronic billing also provides an increase in automation potential, increased efficiency, and data integrity. It is expected that electronic billing will also decrease the time frame to receive medical bills and associated documentation and increase compliance with medical bill payment requirements.

Employers that purchase workers' compensation insurance may experience some positive economic impact from these proposed rules as a result of an overall decrease in the administrative costs to insurance carriers and health care providers related to medical bill processing. There will be no economic costs to employees, as these sections do not impose any requirements on injured employees.

There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. The proposed rule does have a provision for waiver for those carriers that compliance with the rule will cause a financial burden. There is also a waiver provision for health care providers. To the extent that a small business does not qualify for a waiver, it is neither legal nor feasible to waive the provisions of the proposed sections for all small or micro businesses because the Labor Code requires the Division to implement a process for the electronic transmission of information to replace established forms and procedures that require paper processing and these rules accomplish that goal. To the extent that a waiver of application of the rules to small employers needs to occur, provisions have been included in the proposed sections.

Some of the costs described may be based on the cost to the Division to implement electronic billing interfaces. The purpose is to determine an estimated cost to the system and does not imply that an electronic billing model has been selected.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006 to Norma Garcia, General Counsel, Mail Code 4-D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, TX 78744. An additional copy of the comment must be simultaneously submitted to Joseph Montoya, Acting Program Manager, Business Process and

Improvement Manager, Mail Code 4-D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Blvd., Austin, Texas 78744. A request for public hearing should be submitted separately to the General Counsel.

The sections are proposed under Texas Labor Code §§402.024, 408.025, 408.0251, 408.027, 413.007, 413.008, 413.053, 402.0011, and 402.061. Section 401.024 provides the Commissioner the authority to permit or require by rule the use of facsimile or other electronic means to transmit information in the system. Section 402.042 authorizes the Commissioner to enter orders as authorized by the statute as well as to prescribe by rule the form, manner, and procedure for transmission of information to the Division. Section 408.025 requires the Commissioner to specify by rule the reports a health care provider is required to file. Section 408.0251 gives the Commissioner the authority to adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. Section 408.027 provides for payment of health care providers by insurance carriers. Section 413.007 directs the Division to maintain a statewide database of medical billing information. Section 413.008 authorizes the Division to collect certain medical bill and payment information from the insurance carrier. Section 413.053 gives the Commissioner the authority to establish standards of reporting and billing governing both form and content by rule. Section 402.0011 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

#### Statute

Texas Labor Code §§402.024, 408.025, 408.0251, 408.027, 413.007, 413.008, 413.053

#### §133.500. Electronic Formats for Electronic Medical Bill Processing.

(a) The Division prescribes standard electronic formats by adopting the following implementation guides for the medical billing transactions:

(1) Billing:

(A) Professional Billing--ANSI x12 837(P) Version 4010.

(B) Institutional/Hospital Billing--ANSI x12 837(I) Version 4010.

(C) Dental Billing--ANSI x12 837(D) Version 4010.

(D) Pharmacy Billing--NCPDP Telecommunications Standard Version 5.1

(2) Acknowledgment:

(A) Functional Acknowledgment--ANSI x12 997 Version 4010.

(B) Detail Acknowledgment--ANSI x12 824 Version 4010.

(3) Remittance--ANSI x12 835 Version 4010.

(4) Reporting--IAIABC 837 Version 4010.

(5) Documentation--ANSI x12 275 Version 4050.

(b) An implementation guide is a:

(1) specification document for national standard electronic formats as defined in subsection (a) of this section and published by a national standard setting organization that defines data requirements, data transaction sets, and data mapping; or

(2) published specification document that defines specific data requirements, data set transactions, data mapping, or data edits and is intended to accompany national standard implementation guides.

(c) Medical billing transactions must:

(1) contain all fields required in the applicable format implementation guide as set forth in subsection (a) of this section and associated Division implementation guides; and

(2) be populated with current and correct values defined in the applicable implementation guide as set forth in subsection (a) of this section and associated Division implementation guides.

(d) Insurance carriers and health care providers may exchange electronic data in a non-prescribed format by mutual agreement. All data elements required in the Division prescribed formats must be present in a mutually agreed upon format.

#### §133.501. Electronic Medical Bill Processing.

(a) Applicability.

(1) Electronic medical bill processing is the exclusive process to exchange medical bill data in accordance with §133.500 of this chapter (relating to Electronic Formats for Electronic Medical Bill Processing) for professional, institutional/hospital, pharmacy, and dental services.

(2) Insurance carriers must be able to exchange electronic data by January 1, 2008 unless the insurance carrier is excepted from the process in accordance with paragraph (6) of this subsection.

(3) Health care providers must be able to exchange electronic data by January 1, 2008 unless the health care provider is excepted from the process in accordance with paragraph (5) of this subsection.

(4) Health care providers and insurance carriers may contract with other entities for electronic medical bill processing. Insurance carriers and health care providers are responsible for the acts or omissions of its agents executed in the performance of services for the insurance carrier or health care provider.

(A) Health care provider agent is a person or entity that the health care provider contracts with or utilizes for the purpose of fulfilling the health care provider's obligations for electronic medical bill processing under the Texas Labor Code or Division rules.

(B) Insurance carrier agent is a person or entity that the insurance carrier contracts with or utilizes for the purpose of providing claims service or fulfilling the insurance carrier's obligations for electronic medical bill processing under the Texas Labor Code or Division rules.

(5) A health care provider is waived from the requirement to submit medical bills electronically to an insurance carrier if:

(A) the health care provider employs 10 or fewer full time employees, and

(B) workers' compensation constitutes less than 10% of their practice.

(6) An insurance carrier is waived from the requirement to receive medical bills electronically from health care providers on approval from the Division. The Division may grant an exception on a case-by-case basis.

(b) Electronic medical bill.

(1) An electronic medical bill is a medical bill submitted electronically by a health care provider or an agent of the health care provider.

(2) A complete electronic medical bill is an electronic medical bill that:

(A) is submitted in accordance with this chapter, and

(B) identifies the:

(i) injured employee;

(ii) employer;

(iii) insurance carrier;

(iv) health care provider; and

(v) service, supply, or medication.

(3) The received date of an electronic medical bill is the date the bill is electronically transmitted in accordance with §102.4(p) of this title (relating to General Rules for Non-Division Communication). An electronic medical bill is considered received if it meets the criteria of a complete electronic medical bill.

(c) Acknowledgment.

(1) A Functional Acknowledgment is an electronic notification to the sender of an electronic file that the file has been received and:

(A) accepted as a complete, correct file, or

(B) rejected with a valid rejection code.

(2) A Detail Acknowledgment is an electronic notification to the sender of an electronic transaction within an electronic file that the transaction has been received and:

(A) accepted as a complete, correct submission, or

(B) rejected with a valid rejection code.

(3) An insurance carrier must acknowledge receipt of an electronic medical bill by returning a Detail Acknowledgment within 24 hours of receipt of the electronic submission.

(A) Notification of a rejection is transmitted in a Detail Acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

(B) A health care provider may not submit a duplicate electronic medical bill earlier than 45 days from the date submitted if an insurance carrier has acknowledged acceptance of the original complete electronic medical bill. A health care provider may submit a corrected medical bill electronically to the insurance carrier after receiving notification of a rejection. The corrected medical bill is submitted as a new, original bill.

(4) Acceptance of a complete medical bill is not an admission of liability by the insurance carrier. An insurance carrier may subsequently reject an accepted electronic medical bill if it is determined that the employer listed on the medical bill is not a policyholder of the insurance carrier.

(A) The subsequent rejection must occur no later than 7 days from the date of receipt of the complete electronic medical bill.

(B) The rejection transaction must clearly indicate the reason for the rejection is due to denial of liability.

(d) Electronic remittance notification.

(1) An electronic remittance notification is an explanation of benefits (EOB), submitted electronically regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.

(2) An insurance carrier must provide an electronic remittance notification no later than 45 days after receipt of a complete electronic medical bill or within 5 days of generating a payment.

(e) Electronic documentation.

(1) Electronic documentation consists of medical reports and/or records submitted electronically that are related to an electronic medical bill.

(2) Complete electronic documentation related to an electronic medical bill:

(A) is submitted by fax, electronic mail, or in an electronic format and

(B) identifies the:

(i) injured employee,

(ii) insurance carrier,

(iii) health care provider;

(iv) related medical bill(s), and

(v) date(s) of service.

(3) When a health care provider submits electronic documentation related to an electronic medical bill, the documentation must be submitted within 7 days of submission of the electronic medical bill.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600345

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 804-4288



## CHAPTER 180. MONITORING AND ENFORCEMENT

### SUBCHAPTER B. MEDICAL BENEFIT REGULATION

#### 28 TAC §§180.21, 180.22, 180.28

The Texas Department of Insurance, Division of Workers' Compensation proposes new §180.28 and amendments to §180.21 and §180.22 concerning peer reviewers and designated doctors. These proposed sections are necessary to implement new statutory provisions contained in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session.

HB 7 requires standards for an insurance carrier (carrier) to use peer reviews to determine the appropriateness of treatment related to an injured employee's compensable or job-related in-

jury. The proposed amendments and new section are necessary to implement the Labor Code §408.0231, which sets forth the requirements for the Commissioner to adopt rules regarding providers performing peer review functions for insurance carriers, peer review standards, imposition of sanctions on doctors performing peer review functions, and other issues related to the quality of peer reviews. This proposal reflects the Division's efforts to address the following objectives regarding benefits of peer reviews as a result of stakeholder input: ensure the use of peer reviews for health care service of a workers' compensation claim; curtail the carrier's ability to request multiple peer reviews of the same health care services/issues for a favorable decision; require the use of current, evidence-based treatment parameters; facilitate timely and appropriate medical treatments and services; control utilization of medical treatments and services; and control medical costs where appropriate. The intent of this proposal is to improve the quality of health care provided to injured employees and to monitor peer reviews in the workers' compensation system. The implementation of peer review standards helps to ensure that health care providers performing peer reviews consider evidence-based medicine prior to making any determinations related to the review of medical care. The implementation of peer review standards may reduce excessive or inappropriate medical care while safeguarding the delivery of necessary medical care by requiring the treating doctor to identify, prescribe, and provide only appropriate health care. Proposed §180.22 contains health care provider roles and responsibilities, including peer reviewers. Proposed §180.28 sets forth the peer review requirements, reporting, and sanctions, which includes parameters for the request and use of peer review reports.

Amendments to §180.21 and §180.22 are also proposed to implement the expanded role of designated doctors under HB 7, including requirements for additional training to ensure proficiency in determining the injured employee's extent of injury, ability to return to work, and whether the injured employee's disability is the direct result of a work-related injury. Correspondingly, the Division proposes new and additional qualifications that a doctor must meet to be admitted to the Division's Designated Doctor List (DDL) pursuant to Labor Code §408.0041 and §408.1225.

The proposed amendments to subsection (a) of §180.21 identify two new disqualifying associations that prevent a designated doctor from rendering an opinion: having a contract with the same health care network responsible for providing medical care to the examinee; and having any other association with the employee, employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion. Proposed amendments to §180.21 further specify the requirements for admission to the Division's DDL, distinguishing between existing requirements in subsection (c) that remain in effect prior to September 1, 2006, and the revised requirements of subsection (d), effective after September 1, 2006. The revised requirements place greater emphasis on professional competencies in disciplines relevant to treating workers' compensation claimants. The proposed amendments to subsection (e) require reapplication to the DDL every two years and completion of 12 additional hours of relevant training. Importantly, this section also proposes to add the requirement that DDL applicants must confirm with the Division the doctor's training and ability to address the additional issues set forth in Labor Code §408.0041. The proposed amendments to subsection (m) add language related to failure to notify the Division of conflicts caused by the doctor's and injured employee's association with

the same workers' compensation network to the list of reasons a doctor may be deleted or suspended from the DDL.

The proposed amendments to subsection (f) of §180.22 specify the authority under which a RME may be conducted and provide the list of issues the RME doctor may not address unless there has been a prior designated doctor exam on the specific issue, or specific direction from the Division.

Additionally, the proposed amendments to §180.21 and §180.22 remove unnecessary language to increase the clarity of the sections, reduce confusion, and address new statutory requirements of HB 7. The term "Commission" has been changed to either "Division" or "Commissioner," as appropriate for consistency.

Allen McDonald, Director, Medical Review, has determined that for each year of the first five years the proposed sections will be in effect there will be a minimal fiscal impact to state and local governments as a result of the enforcement or administration of the sections. With a structured peer review process and the adoption of standard and universally applied treatment guidelines, the volume of requests to the Division for medical dispute resolution regarding medical necessity of treatments and services is anticipated to decrease. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. McDonald has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the proposed sections will be an improved system of monitoring health care for injured employees and the reduction of the administrative burdens introduced through the frequent use of peer reviews to deny entitlement to reasonable and necessary treatment. The adoption of standards related to peer reviews helps ensure that an appropriately licensed doctor considers evidence-based medicine prior to making any determinations related to the review of medical care. Allowing the continued use of peer reviews with these parameters will reduce excessive or inappropriate medical care while safeguarding the delivery of necessary medical care. Health care providers should benefit from the clarification in the rules. They may experience increased training costs associated with the proposed rules and the Chapter 126 and 130 rules concurrently proposed. The Division estimates that training costs will be approximately \$500 to attend the initial required designated doctor training and testing. The bi-annual training costs are also estimated to be approximately \$500. Insurers will realize a positive financial impact from savings resulting from the elimination of unnecessary medical services or treatments. Employers may also realize a positive financial impact through a reduction of insurance premiums. Injured employees will be positively impacted in a structured peer review process, which minimizes interruptions in receipt of medical treatment. No economic costs are anticipated for injured employees to comply with the requirements of the sections.

Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 6, 2006, to Norma Garcia, General Counsel, MS 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Blvd., Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Allen McDonald, MS 40, Director of Medical Review, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Blvd., Suite 100, Austin, Texas 78744. A request for a public hearing should be separately submitted.

The new section and amendments are proposed under the Labor Code §§408.023, 408.0231, 408.004, 408.0041, 408.1225, 402.00111, and 402.061. Section 408.023 governs the Division's Approved Doctor List (ADL) and requires the Division to establish criteria for sanctions and removal of doctors from the ADL. Section 408.0231 requires the Commissioner of Workers' Compensation to adopt rules regarding doctors who perform peer review functions for insurance carriers, which may include standards for peer reviews, imposition of sanctions on doctors performing peer reviews, and other issues important to the quality of peer reviews. Section 408.004 provides for required medical examinations to resolve questions about the appropriateness of health care received by injured employees. Section 408.0041 sets out requirements for designated doctors and their examinations and requires the Division to order a medical examination to resolve any question about an injured employee's impairment caused by the compensable injury or the attainment of maximum medical improvement at the request of an insurance carrier or injured employee. Section 408.1225 requires the Commissioner of Workers' Compensation to develop qualification standards and administrative policies regarding eligibility to serve as a designated doctor. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following statutes are affected by this proposal: Texas Labor Code §§408.023, 408.0231, 408.004, 408.0041

*§180.21. Division [Commission] Designated Doctor List.*

(a) The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Active practice--A doctor has an active practice if the doctor maintains routine office hours of at least 20 hours per week for the treatment of patients.

(2) Disqualifying association--Any association that may reasonably be perceived as having potential to influence the conduct or decision of a doctor, which may include:

(A) receipt of income, compensation, or payment of any kind not related to health care provided by the doctor;

(B) shared investment or ownership interest;

(C) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;

(D) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, or warranties, or any other services related to the management of the doctor's practice;

(E) personal or family relationships;

(F) a contract with the same workers' compensation health care network that is responsible for the provision of medical benefits to the injured employee; or

(G) any other financial arrangement that would require disclosure under the Labor Code or applicable Division rules, or any other association with the injured employee, the employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.

(b) [(a)] In order to serve as a designated doctor, a doctor must be on the Designated Doctor List (DDL).

[(b) To be on the DDL prior to September 1, 2003, the doctor shall at a minimum:]

[(1) be currently active on the Approved Doctor List (ADL) as set forth in Texas Labor Code §408.023 and §180.20 of this title (relating to Commission Approved Doctor List);]

[(2) have maintained for the past three years and continue to maintain an active practice;]

[(3) have filed a request to be on the DDL in the form and manner prescribed by the commission and been approved by the commission; and]

[(4) meet the following training requirements:]

[(A) have successfully completed commission-approved training in the proper use of the AMA Guides prior to submission of an application;]

[(B) have successfully completed commission-approved training at least every two years from the date of the last training; and]

[(C) have passed the commission-approved written examination for impairment rating training within the timeframe specified by the commission.]

(c) To be on the DDL prior to September 1, 2006, [on or after September 1, 2003,] the doctor shall at a minimum:

(1) be currently active on the Division's Approved Doctor List (ADL) [ADL] with a Level 2 Certificate of Registration with no condition(s) or restriction(s); or have a temporary exception to the requirement to be on the ADL; as set forth in [Texas] Labor Code §408.023 and §180.20 of this title; (relating to Commission Approved Doctor List);

(2) have had an active practice for one year during their career;

(3) be fully authorized to assign impairment ratings and certify maximum medical improvement (MMI) under §180.23(i) of this title (relating to Commission Required Training for Doctors/Certificate of Registration Levels);

(4) have filed a request in the form and manner prescribed by the Division [commission;] and have been approved by the Commissioner [commission] to be included on the DDL; and

(5) either maintain an active practice or successfully complete Division-approved [commission-approved] supplemental training on medical issues relevant to workers' compensation and/or serving as a designated doctor. Supplemental training shall be completed between 18 and 30 months following the doctor's passing the test required to obtain and retain full MMI/impairment authorization.

(d) To be on the DDL on or after September 1, 2006, the doctor shall at a minimum:

(1) meet the registration requirements, or the exceptions thereto, of subsection (c)(1) of this section or, upon expiration or waiver of the ADL in accordance with Labor Code §408.023(k), comply with all successor requirements, including but not limited to financial disclosure under Labor Code §413.041;

(2) have filed an application to be on the DDL, which must be renewed biannually;

(3) be at least board eligible to sit for an American Board of Medical Specialties examination and have at least one year of additional clinical experience treating injured employees in the Texas Workers' Compensation System or hold a Texas Doctorate of Chiropractic (D.C.) license and have three years of clinical experience, including treating injured employees in the Texas Workers' Compensation System. (D.C. Designated Doctor opinions shall be limited to injured employees with conditions of the musculoskeletal system); and

(4) have successfully:

(A) attained "Fellow" status with the American Academy of Disability Evaluating Physicians, or

(B) completed Division-approved training and examination on the assignment of impairment ratings using the currently adopted edition of the American Medical Association Guides, medical causation, extent of injury, functional restoration, return to work, and other disability management topics.

(e) A doctor shall renew an application status biannually and shall have completed and submitted to the Division information verifying 12 additional credit hours of training in accordance with subsection (d)(4)(B) of this section with each renewal application.

(f) [(~~h~~)] An incomplete application for registration to be admitted to the DDL pursuant to this section and other applicable rules[Rules] shall be rejected and shall not be processed.

(g) A complete application shall include:

(1) general contact information including, but not limited to: name, mailing address, telephone[voice] and facsimile numbers, and an email address;

(2) the training certificate indicating the level of training completed;

(3) Impairment Rating Skills Examination score;

(4) verification of licensure;

(5) information on the doctor's training and experience in various types of health care and injury areas; [and]

(6) disciplinary actions or practice restrictions by an appropriate licensing or certification authority, if any; and [-]

(7) other information required by the Division to confirm the doctor's training and ability to determine:

(A) the extent of the injured employee's compensable injury;

(B) whether the injured employee's disability is the direct result of a work-related injury;

(C) the ability of the injured employee to return to work;  
or

(D) issues similar to those described in Labor Code §408.0041(a)(1) - (6).

(h) [(~~e~~)] The Commissioner [commission] may utilize members of the Medical Quality Review Panel (MQRP) for evaluating DDL applications and making recommendations to the Medical Advisor to approve or deny admission to the DDL. The Commissioner [commission] may also utilize members of the MQRP regarding deletion, suspension, or other sanction of a designated doctor as provided in this section.

(i) [(~~f~~)] Doctors shall be denied admission to the DDL:

(1) if the doctor does not meet the requirements of subsection (c)(1) of this section prior to September 1, 2006 or subsection (d)(1) of this section on or after September 1, 2006;

(2) if the doctor has not completed required training in accordance with §180.23(i) of this title and passed the Division[commission] approved test;

(3) for failing to submit a complete application in accordance with this section;

(4) for having a relevant restriction on their practice (including, but not limited to, prior deletion from the ADL or DDL, or a prior ADL restriction); or

(5) for other activities that [which] warrant denial of the application to be on the DDL, [denial] such as grounds that would require the Medical Advisor to recommend deletion of a doctor from the ADL or other sanction of a doctor as specified in §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or other applicable statutes or rules[the Statute and Rules].

(j) [(~~g~~)] The Division [commission] shall notify a doctor of the Commissioner's [commission's] approval or denial of the doctor's application to be on the DDL.

(1) Denials shall include the reason(s) for the denial.

(2) Within 15 days after receiving the notice, the doctor may file a response, which addresses the reasons given for the denial.

(A) If a response is not received by the 15th day after the date the doctor received the notice, the denial shall be final effective the following day. No further notice shall be sent.

(B) If a response which disagrees with the denial is timely received, the Division [commission] shall review the response and shall notify the doctor of the Commissioner's [commission's] final decision. If the final decision is a denial, the Division's [commission's] final notice shall provide the reason(s) why the doctor's response did not convince the Commissioner [commission] to admit the doctor to the DDL. The denial shall be effective the day following the date the doctor receives notice of the denial unless otherwise specified in the notice.

(3) Notwithstanding other provisions of this subsection, for denials pursuant to subsection (i)(1), (2), (3) and (5) of this section, the doctor may within five working days of receipt of notice, [§§180.21(f)(1)-(3) of this title (relating to Commission Designated Doctor List), and for denials pursuant to §180.21(f)(5) of this title wherein the subsection of §180.26 of this title relied upon is subsection (b), and within five working days (as defined by §102.3(b) of this title (relating to Computation of Time) after receiving the notice, the doctor may] file a response which addresses the reason(s) given for the denial.

(A) If a response is not received by the fifth working day after the date the doctor received the notice, the action shall be final effective the following day. No further notice shall be sent.

(B) If a response which disagrees with the action is timely received, the Division [commission] shall review the response

and shall notify the doctor of the Commissioner's [commission's] final decision. A final decision denying the doctor admission to the DDL shall provide the reason(s) why the doctor's response did not convince the Commissioner [commission] to grant the doctor admission to the DDL. The denial shall be effective the day following the date the doctor receives notice of the denial unless otherwise specified in the notice.

(4) All notices under this subsection shall be delivered by a verifiable means. Date of receipt for notices shall be determined in accordance with §102.5(d) of this title (relating to General Rules for Written Communication to and from the Commission).

(5) The fact that the Commissioner [commission] did not take action to deny or restrict admission to the DDL does not waive the Commissioner's [commission's] right to review or further review a doctor and take action at a later date.

(k) ~~[(h)]~~ When necessary because the injured employee is temporarily located or is residing out-of-state, the Division [commission] may waive any of the requirements as specified in this rule for an out-of-state doctor to serve as a designated doctor to facilitate a timely resolution of the dispute.

(l) ~~[(i)]~~ Doctors on the DDL shall provide the Division [commission] with updated information within 30 days of a change in any of the information provided to the Division [commission] on the doctor's DDL application.

(m) ~~[(j)]~~ In addition to the grounds for deletion or suspension from the ADL or for issuing other sanctions against a doctor under §180.26 of this title, the Commissioner [commission] shall delete or suspend a doctor from the DDL, or otherwise sanction a designated doctor for noncompliance with requirements of this section or any of the following:

(1) four refusals within a 90-day period, or four consecutive refusals to perform within the required time frames, a Division [commission] requested appointment for which the doctor is qualified;

(2) misrepresentation or omission of pertinent facts in medical evaluation and narrative reports;

(3) having a pattern of practice of unnecessary referrals to other health care providers for the assignment of an impairment rating or determination of MMI;

(4) submission of inaccurate or inappropriate reports as a pattern of practice due to insufficient examination and analysis of medical records;

(5) ~~[willful]~~ failure to timely respond as a pattern of practice to a request for clarification from the Division [commission] regarding an examination ~~[or failure to timely respond as a pattern of practice]~~;

(6) assignments of MMI and/or impairment ratings overturned in a contested case hearing, appeals panel decision and/or court decision;

(7) any of the factors listed in subsection (i) ~~[(f)]~~ of this section that would allow for denial of admission to the DDL;

(8) failure to ~~[timely]~~ successfully complete training and testing requirements as specified in subsections ~~[(b) or] (c) or (d)~~ of this section;

(9) failure to notify the Division [commission field office] of any disqualifying association, including conflicts caused by the doctor's and the injured employee's association with the same workers' compensation health care network, within 48 hours of receiving notice

of being selected as a designated doctor as a pattern of practice or conducting an examination when there is a disqualifying association;

(10) failure to maintain an active practice or failure to maintain the alternate training requirements outlined in subsection (c)(5) of this section;

(11) self-referring, including referral to another health care provider with whom the designated doctor has a disqualifying association, for treatment or becoming the employee's treating doctor for the medical condition evaluated by the designated doctor; or

(12) other ~~[significant]~~ violation of applicable statutes or rules [Statute and/or Rules] while serving as a designated doctor.

(n) ~~[(k)]~~ The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Sanctions Process/Appeals) except that suspension, deletion, or other sanction relating to the DDL shall be in effect during the pendency of any appeal.

(o) ~~[(l)]~~ The Division [commission] shall make available through its ~~[Internet]~~ website the names of:

(1) doctors on the DDL;

(2) doctors deleted or suspended from the list or otherwise sanctioned by the Commissioner [commission] (including a description of the sanction); and

(3) doctors reinstated to the list or whose sanctions were lifted by the Commissioner [commission].

(p) ~~[(m)]~~ When a doctor is added to the DDL or readmitted following a suspension or deletion, the doctor shall be placed at the bottom of the list for rotation purposes under [Texas] Labor Code §408.0041.

~~[(n)]~~ The following definitions apply to this section:}

~~[(1)]~~ Active practice—a doctor has an active practice if the doctor maintains routine office hours of at least 20 hours per week for the treatment of patients.}

~~[(2)]~~ Disqualifying Association—any association which may reasonably be perceived as having potential to influence the conduct or decision of the designated doctor.}

~~[(A)]~~ A disqualifying association between a designated doctor and a party may include:}

~~[(i)]~~ receipt of income, compensation, or payment of any kind not related to health care provided by the doctor;}

~~[(ii)]~~ shared investment or ownership interest;}

~~[(iii)]~~ contracts or agreements that provide incentives, such as referral fees; payments based on volume or value; and waiver of beneficiary coinsurance and deductible amounts;}

~~[(iv)]~~ contracts or agreements for space or equipment rentals; personnel services; management contracts; referral services; or warranties; or any other services related to the management of the doctor's practice;}

~~[(v)]~~ personal or family relationships; or}

~~[(vi)]~~ any other financial arrangement that would require disclosure under §180.24 of this title (relating to Financial Disclosure).}

~~[(B)]~~ Receipt of normal payments rendered for services provided pursuant to managed care/preferred provider contracts, or any payment in accordance with the Texas Workers' Compensation Act and rules; is not a disqualifying association.}

~~{(3) Party--any of the following entities including any of their agents or representatives: the insurance carrier, health care provider (including designated doctor and treating doctor), injured employee, or employer.}~~

~~{(4) Self-Refer--treatment by the designated doctor or referral for treatment to another health care provider with which the designated doctor has a disqualifying association.}~~

*§180.22. Health Care Provider Roles and Responsibilities.*

(a) Health care providers shall provide reasonable and necessary health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; and/or
- (3) enhances the ability of the employee to return to or retain employment.

(b) In addition to the general requirements of this section, health care providers shall timely and appropriately comply with all applicable requirements under the statutes ~~[Statute]~~ and rules ~~[Rules]~~, including, but not limited to:

- (1) reporting required information;
- (2) disclosing financial interests;
- (3) impartially evaluating an employee's condition; and
- (4) correctly billing for health care provided.

(c) The treating doctor is the doctor primarily responsible for the efficient management of health care and for coordinating the health care for an injured employee's (employee) compensable injury. The treating doctor shall:

(1) except in the case of an emergency, approve or recommend all health care rendered to the employee including, but not limited to, medically reasonable and necessary treatment or evaluation provided through referrals to consulting and referral doctors or other health care providers, as defined in this section;

(2) maintain efficient utilization of health care;

(3) communicate with the employee, employer, and insurance carrier (carrier) about the employee's ability to work or any work restrictions on the employee;

(4) make available, upon request, in the form and manner prescribed by the Division ~~[commission]~~:

- (A) work release data;
- (B) cost and utilization data;

(C) patient satisfaction data, including comorbidity, "Short Form 12" outcome information (sf 12) ~~[also known as "sf 12"]~~, and recovery expectations.

(d) The consulting doctor is a doctor who examines an employee or the employee's medical record in response to a request from the treating doctor, the designated doctor, or the Division ~~[commission]~~. The consulting doctor shall:

(1) perform unbiased evaluations of the employee as directed by the requestor including, but not limited to, evaluations of:

(A) the accuracy of the diagnosis and appropriateness of the treatment of the injured employee;

(B) the employee's work status, ability to work, and work restrictions;

(C) the employee's medical condition; and

(D) other similar issues;

(2) submit a [the] narrative report [required by §133.104 of this title (relating to Consultant Medical Reports)] to the treating doctor, the employee, the employee's representative (if any), the carrier, and~~;~~the Division ~~[commission]~~ (if the requestor was the Division ~~[commission]~~);

(3) not make referrals without the approval of the treating doctor and~~;~~ when such approval is obtained, ensure that the provider to whom the consulting doctor is making an approved referral knows the identity and contact information of the treating doctor;

(4) initiate or provide treatment only if the treating doctor approves or recommends the treatment; and

(5) become a referral doctor if the doctor begins to prescribe or provide health care to an employee.

(e) The referral doctor is a doctor who examines and treats an employee in response to a request from the treating doctor. The referral doctor shall:

(1) supplement the treating doctor's care; ~~[and]~~

(2) report the employee's status to the treating doctor and the carrier at least every 30 days; and

(3) not make referrals without the approval of the treating doctor and~~;~~ when such approval is obtained, ensure that the provider to whom the referral doctor is making an approved referral knows the identity and contact information of the treating doctor.

(f) The Required Medical Examination (RME) doctor is a doctor who examines the employee's medical condition in response to a request from the carrier or the Division pursuant to ~~[commission under Texas]~~ Labor Code §§408.004, 408.0041, or 408.151. The RME doctor shall:

(1) perform unbiased evaluations of the employee as directed by the RME notice issued by the Division ~~[order including, but not limited to, evaluations of:]~~

~~{(A) the accuracy of the diagnosis and appropriateness of the treatment of the injured employee;}~~

~~{(B) the employee's work status, ability to work, and work restrictions;}~~

~~{(C) the employee's medical condition; and}~~

~~{(D) other similar issues;}~~

(2) not make referrals without the approval of the treating doctor and when such approval is obtained, ensure that the provider to whom the RME doctor is making an approved referral knows the identity and contact information of the treating doctor;

(3) initiate or provide treatment only if the treating doctor approves or recommends the treatment; and

(4) not evaluate ~~[the employee's maximum medical improvement (MMI) status or permanent whole body impairment]~~, except following an examination by a designated doctor, or as otherwise directed by the Division ~~[commission and when performing such an examination, shall do so in an unbiased manner:]~~

(A) the impairment caused by the employee's compensable injury;

(B) the attainment of maximum medical improvement;

(C) the extent of the employee's compensable injury;



(D) whether the employee's disability is a direct result of the work related injury; or

(E) the ability of the employee to return to work.

(g) A peer reviewer is a health care provider who, at the insurance carrier's request, performs a review of the health care of a workers' compensation claim. The peer reviewer must not have any known conflicts of interest with the injured employee or the health care provider who rendered any health care being reviewed. [The peer or utilization reviewer evaluates medical and health care services, including evaluation of the qualifications of professional health care practitioners and of health care provided by those practitioners. Peer or utilization reviews generally include the evaluation of the:]

(1) A peer reviewer who performs a prospective, concurrent, or retrospective review of the medical necessity or reasonableness of health care services is subject to the requirements of Insurance Code Article 21.58A and Chapter 1305 and applicable provisions of the Labor Code. [accuracy of a diagnosis;]

(2) A peer reviewer who performs a review for any issue other than medical necessity, such as compensability or an injured employee's ability to return to work, must hold an appropriate professional license in Texas. [quality of the care provided by a health care practitioner; and/or]

{(3) the reasonableness and medical necessity of health care provided or proposed to be provided to an employee.}

(h) The designated doctor is a doctor assigned [appointed] by the Division [commission] to recommend a resolution of a dispute as to the medical condition of an employee. The qualifications and responsibilities of a designated doctor are governed by §180.21 of this title (relating to Division [Commission] Designated Doctor List) and other rules [Rules] providing for use of a designated doctor.

(i) A member of the Medical Quality Review Panel (MQRP) is a health care provider chosen by the Division's [commission's] Medical Advisor under Texas Labor Code §413.0512. All eligibilities, terms, responsibilities, and prohibitions shall be prescribed by contract, and the MQRP members shall serve on the MQRP as prescribed by contract. A provider must meet the performance standards specified in the contract to be eligible for selection by the Medical Advisor to serve on the MQRP. Doctors seeking [who seek] membership on the MQRP are required to be on the Division's Approved Doctor List [ADE].

§180.28. Peer Review Requirements, Reporting, and Sanctions.

(a) A peer reviewer's report shall document the objective medical findings and evidence-based medicine that supports the opinion and include:

(1) the peer reviewer's name and professional license number;

(2) a summary of the reviewer's qualifications;

(3) a summary of the clinical history; and

(4) an analysis and explanation for the peer review recommendation, including the findings and conclusions used to support the recommendations.

(b) The insurance carrier shall not request subsequent peer reviews regarding the medical necessity of health care for dates of services for which a peer review report has already been issued.

(c) The insurance carrier shall submit a copy of a peer review report to the treating doctor and the health care provider who rendered the health care when the insurance carrier uses the report to negatively impact or reduce income or medical benefits of an injured employee.

(d) A peer reviewer shall maintain copies of all peer review reports written and make them available to the Division upon request. The Division will monitor peer review reports, which may result in the initiation of medical quality reviews.

(e) The Commissioner may impose sanctions on doctors performing peer reviews pursuant to Labor Code §408.0231 and other applicable provisions of the Labor Code and Division rules. The Commissioner may prohibit a doctor from conducting peer reviews for any of the following:

(1) non-compliance with the provisions of §180.22 of this subchapter (relating to Health Care Provider Roles and Responsibilities);

(2) failure to consider all records available for review;

(3) a history of improper or unjustified decisions regarding the medical necessity of health care reviewed; or

(4) any other violation of the Labor Code or Division rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600347

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 804-4288

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 355. RESEARCH AND PLANNING FUND**

The Texas Water Development Board (board) proposes amendments to 31 TAC §§355.70, 355.91, 355.93, 355.97 and 355.100, concerning the Research and Planning Fund. These amendments are proposed pursuant to the four-year rule review requirement of Texas Government Code §2001.039.

The board proposes to amend §355.70(4) and (5) to correct the reference to the Texas Commission on Environmental Quality. The rule still refers to the Commission as the Texas Natural Resource Conservation Commission, instead of its correct name, the Texas Commission on Environmental Quality.

The board proposes to amend §355.91(8) and (9) to correct the reference to the Texas Commission on Environmental Quality.

The board proposes amending §355.93(b)(5) to correct a citation error. The provision refers to water management strategy analyses and cites §357.7(a)(6) of this title. However, that citation is incorrect and should be §357.7(a)(7). The board proposes to merely correct the citation.

The board also proposes amending §355.93(d) to correct a second citation error. The provision refers to regional water planning group bylaws and cites §357.4(k) of this title. However, that citation is incorrect and should be §357.4(l). The board proposes to merely correct this citation, as well.

The board proposes to amend §355.97(b)(2) to correct the reference to the Texas Commission on Environmental Quality.

The board proposes amending §355.100 to correct the name for the Texas Commission on Environmental Quality.

Pursuant to §2001.024, Government Code, James LeBas, Chief Financial Officer, has determined that, for the first five-year period the amendments are in effect, there are no additional estimated costs or lost revenues for state or local governments as a result of enforcing or administering the amended sections. There are also no estimated reductions in costs or increased revenues for state and local governments as a result of enforcing or administering the amended sections. Enforcing or administering the amended sections does not have any foreseeable implications relating to cost or revenues for state and local governments.

Pursuant to §2001.024, Government Code, Mr. LeBas has also determined that, during the first five years the amendments, as proposed, are in effect the public benefit anticipated as a result of enforcing the proposed amendments is that the public will have an increased understanding of the rules and the regional water planning grant process.

Pursuant to §2006.002, Government Code, Mr. LeBas has determined that there is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the amended sections. Further, pursuant to §2001.022, Government Code, Mr. LeBas has determined that these proposed amendments have no effect on local economies. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated effect on local employment in geographic areas affected by these proposed amendments.

Comments on the proposal may be directed to Ron Pigott, Attorney, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail at Ron.Pigott@twdb.state.tx.us, or by fax at (512) 463-5580. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

## **SUBCHAPTER B. ECONOMICALLY DISTRESSED AREAS FACILITY ENGINEERING**

### **31 TAC §355.70**

Ron Pigott, Attorney, certifies that the proposed amendments have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

These amendments are proposed under the Texas Water Code, §6.101 and §16.053, which authorizes the board to adopt administrative rules necessary to carry out the regional water planning process.

The statutory provision affected by the proposed amendments is Texas Water Code §16.053.

#### *§355.70. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 or 17, and not defined here shall have the meaning provided by the appropriate chapter.

(1) - (3) (No change.)

(4) Minimal wastewater needs--A wastewater system that complies with the minimum state wastewater conveyance and treatment requirements as established by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(5) Minimal water supply needs--A water system that complies with the minimum state water treatment, conveyance, and storage regulatory requirements for human consumption as established by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(6) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600323

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Proposed date of adoption: March 21, 2006

For further information, please call: (512) 475-2052

## **SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS**

### **31 TAC §§355.91, 355.93, 355.97, 355.100**

Ron Pigott, Attorney, certifies that the proposed amendments have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

These amendments are proposed under the Texas Water Code, §6.101 and §16.053, which authorizes the board to adopt administrative rules necessary to carry out the regional water planning process.

The statutory provision affected by the proposed amendments is Texas Water Code §16.053.

#### *§355.91. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the applicable provisions of the Texas Water Code, Chapters 15 and 16, and not defined here shall have the meanings provided by such chapters.

(1) - (7) (No change.)

(8) State environmental planning criteria--Criteria adopted by the board for inclusion in the state water plan after coordinating with staff of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], and the Texas Parks and Wildlife Department and used for evaluating the feasibility of alternative water management strategies for planning purposes in the absence of information from site specific studies.

(9) State population and demand projections--Population and water demand projections contained in the state water plan or adopted by the board after consultation with the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], the Texas Department of Agriculture, the Texas Parks and Wildlife

Department, and regional water planning groups in preparation for revision of the state water plan.

(10) (No change.)

**§355.93. Eligibility.**

(a) (No change.)

(b) Activities. Those activities directly related and necessary to the development or revision of regional water plans are eligible for funding within the limits established in §355.99 of this title (relating to Funding Limitations), with the exception of:

(1) - (4) (No change.)

(5) analyses of benefits and costs of water management strategies unless the water management strategy must receive a state or federal permit, the regional water planning group has completed the water management strategy analysis required in §357.7(a)(7) [~~§357.7(a)(6)~~] of this title (relating to Regional Water Plan Development), and the regional water planning group demonstrates to the satisfaction of the executive administrator that these analyses are necessary to determine which water management strategy to select.

(c) (No change.)

(d) Bylaws. The board may not approve funds for a regional water planning area until a copy of the adopted bylaws of the regional water planning group that meet the requirements of §357.4(l) [~~§357.4(k)~~] of this title (relating to Designation of Regional Water Planning Groups) has been filed with the executive administrator.

(e) (No change.)

**§355.97. Notice Requirements.**

(a) (No change.)

(b) Develop or revise regional water plans. Eligible applicants requesting funds to develop or revise regional water plans must, not less than 30 days before board consideration of the application, provide notice that an application for planning assistance is being filed with the executive administrator by:

(1) (No change.)

(2) mailing notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat and that is located in whole or in part in the regional water planning area, to each county judge of a county located in whole or in part in the regional water planning area, to all districts and authorities created under Texas Constitution, Article III, §52, or Article XVI, §59, located in whole or in part in the regional water planning area based upon lists of such water districts and river authorities obtained from Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], and all regional water planning groups in the state.

(c) - (d) (No change.)

**§355.100. Availability of Reports and Planning Documents.**

All reports, planning documents and any other work products resulting from projects receiving board funding assistance must be made available to the board, the Texas Parks and Wildlife Department, Texas Department of Agriculture, and the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] and one copy of the regional water plans placed in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the regional water planning area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600324

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Proposed date of adoption: March 21, 2006

For further information, please call: (512) 475-2052



## CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

### 31 TAC §§357.3 - 357.5, 357.7, 357.12, 357.15

The Texas Water Development Board (board) proposes amendments to 31 TAC §§357.3 - 357.5, 357.7, 357.12, and 357.15, concerning Regional Water Planning Guidelines. These amendments are proposed in order to conform to the statutory changes of House Bill 1763, 79th Legislature, Regular Session (2005) and House Bill 1378, 78th Legislature, Regular Session (2003), and pursuant to the four-year rule review requirement of Texas Government Code §2001.039.

The board proposes an amendment to §357.3(b) to correct the reference to the Texas Commission on Environmental Quality. The rule still refers to the Commission as the Texas Natural Resource Conservation Commission, instead of its correct name, the Texas Commission on Environmental Quality.

The board proposes amending §357.4(h) to correct the name for the Texas Commission on Environmental Quality.

The board proposes amending §357.5(d) and (e) to correct the name for the Texas Commission on Environmental Quality. The board also proposes amending §357.5(k)(1)(D) to replace the word "certified" with "approved." The board proposes this because House Bill 1763 changed the groundwater management plan certification process to an "approval" process. The board merely proposes to correct the term to conform to House Bill 1763.

The board proposes amending §357.7(a)(3) and (7) to correct the name for the Texas Commission on Environmental Quality.

The board proposes amending §357.12(a)(5)(C) - (E) to correct the name for the Texas Commission on Environmental Quality. The board also proposes amending §357.12(a)(6) to change public comment period for initially prepared plans and regional water plan amendments from 30 days to 60 days. The board proposes this in order to resolve a conflict that exists with §357.11(b)(3), which currently requires public comments be accepted until 60 days after the public hearing. The proposed amendment will make these two provisions consistent. The board also proposes adding §357.12(e) to conform to House Bill 1378, 78th Legislature, Regular Session (2003). House Bill 1378 amended §16.053, Water Code, to require regional water planning groups to provide the Texas Water Advisory Council with a copy of the groups' regional water plans upon request. The board merely proposes to add this requirement to §357.12.

The board proposes to amend §357.15(a) to substitute the word "certified" with "approved" to reflect the change House Bill 1763 made to the groundwater management plan certification process. The board also proposes to change "regional water plan" to "state water plan" because House Bill 1763 amended

§16.053(p), Water Code, to change the conflict analysis between groundwater management plans and regional water plans to be between groundwater management plans and the state water plan. The board proposes amending §357.15(b) to delete the phrase "Within 30 days of receipt of the petition" and to add the phrase "provide technical assistance to" in order to make the rule consistent with House Bill 1763. The board also proposes to add new language to §357.15(b) to describe the process the board will use to resolve a petition from a groundwater conservation district that a conflict exists between a groundwater management plan and the state water plan. This process tracks the language of House Bill 1763. The process includes mediation between the groundwater conservation district and the appropriate regional water planning group and requires the board to resolve the conflict within 60 days of the mediation, if mediation is not successful. The board also proposes amending §357.15(c) to delete the first sentence and to conform the time period for the board to resolve the conflict with the time period identified in House Bill 1763. The board also proposes to change the time period for issuing notice of the board's intent to resolve the conflict from 30 days notice to 15 days notice. The board proposes this based on the short time frame it has to resolve the conflict after mediation has concluded. The board proposes to amend §357.15(c) to change the word "certified" to "approved" to conform to House Bill 1763. The board also proposes amending §357.15(e) to replace "certified" with "approved." The board also proposes removing the phrase "suspend the certification of the plan" from §357.15(e) because that process was eliminated by House Bill 1763. The board proposes amending the language concerning amending groundwater management plans to conform to House Bill 1763, as well. Based on House Bill 1763, if the board determines the conflict should be resolved by a revision to the groundwater management plan, the board must provide this information to the groundwater conservation district, which shall revise its plan based on this information. If the district disagrees with the decision of the board, it may appeal the decision in Travis County district court. The language the board proposes to §357.15(e) follows this process and is consistent with House Bill 1763.

Pursuant to §2001.024, Government Code, James LeBas, Chief Financial Officer, has determined that, for the first five-year period the amendments are in effect, there are no additional estimated costs or lost revenues for state or local governments as a result of enforcing or administering the amended sections. There may be a cost to groundwater conservation districts if they appeal a board decision to district court. However, that cost is discretionary and cannot be determined by the board. There are also no estimated reductions in costs or increased revenues for state and local governments as a result of enforcing or administering the amended sections. Enforcing or administering the amended sections does not have any foreseeable implications relating to cost or revenues for state and local governments.

Pursuant to §2001.024, Government Code, Mr. LeBas has also determined that, during the first five years the amendments, as proposed, are in effect the public benefit anticipated as a result of enforcing the proposed amendments is that the public will have an increased understanding of the rules and the regional water planning process and the interactions between regional water planning groups and groundwater conservation districts will be more efficient.

Pursuant to §2006.002, Government Code, Mr. LeBas has determined that there is no adverse economic effect on small or

micro-businesses as a result of enforcing or administering the amended sections. Further, pursuant to §2001.022, Government Code, Mr. LeBas has determined that these proposed amendments have no effect on local economies. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated effect on local employment in geographic areas affected by these proposed amendments.

Comments on the proposal may be directed to Ron Pigott, Attorney, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail at Ron.Pigott@twdb.state.tx.us, or by fax at (512) 463-5580. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

Ron Pigott, Attorney, certifies that the proposed amendments have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

These amendments are proposed under the Texas Water Code, §6.101 and §16.053, which authorizes the board to adopt administrative rules necessary to carry out the regional water planning process.

The statutory provision affected by the proposed amendments is Texas Water Code §16.053.

#### §357.3. *Designation of Regional Water Planning Areas.*

(a) (No change.)

(b) The board shall review and update the designations of regional water planning areas as necessary but at least every five years, on its own initiative or upon recommendation of the executive administrator. The board shall provide notice of its intent to amend the designations of regional water planning areas 30 days before making any change by publishing notice of the proposed change in the *Texas Register* and by mailing notice of the proposed change 30 days before making any change to the affected regional water planning groups, to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the regional water planning areas proposed to be impacted, to each water district or river authority located in whole or in part in the regional water planning area based upon lists of such water districts and river authorities obtained from Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], and to each county judge of a county located in whole or in part in the regional water planning areas proposed to be impacted. After the notice period, the board shall hold a public hearing at a location to be determined by the board before making any changes to the designation of a regional water planning area, and may thereafter take actions to change the regional water planning area.

#### §357.4. *Designation of Regional Water Planning Groups.*

(a) - (g) (No change.)

(h) The regional water planning group, at its discretion may add as non-voting members:

(1) - (2) (No change.)

(3) a representative designated by state or federal agencies, including Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] and Texas General Land Office, or other entities that the regional water planning groups determine important to the planning effort.

(i) - (m) (No change.)

#### §357.5. *Guidelines for Development of Regional Water Plans.*

(a) - (c) (No change.)

(d) Use of population and water demands. In developing regional water plans, regional water planning groups shall use:

(1) state population and water demand projections contained in the state water plan or adopted by the board after consultation with the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], Texas Department of Agriculture, Texas Parks and Wildlife Department, and regional water planning groups in preparation for revision of the state water plan; or

(2) in lieu of paragraph (1) of this subsection, population or water demand projection revisions that have been adopted by the board, after coordination with Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], Texas Department of Agriculture, Texas Parks and Wildlife Department, and regional water planning groups when the requesting regional water planning group demonstrates that the population and water demand projections developed pursuant to paragraph (1) of this subsection no longer represent a reasonable projection of anticipated conditions based on changed conditions and availability of new information. Before requesting a revision to the population and water demand projections, the regional water planning group shall discuss the issue at a public meeting for which notice has been posted pursuant to the Open Meetings Act in addition to being published on the internet and mailed at least 14 days before the meeting to every person or entity that has requested notice of regional water planning group activities. The public will be able to submit oral or written comment at the meeting and written comments for 14 days following the meeting. The regional water planning group will summarize the public comments received in its request for projection revisions. Within 45 days of receipt of a request from a regional water planning group for revision of population or water demand projections, the executive administrator shall consult with the requesting regional water planning group and respond to their request.

(e) Plan development. In developing regional water plans, regional water planning groups shall:

(1) ensure that water management strategies are adjusted to provide for appropriate environmental water needs, including instream flows and bays and estuaries inflows. Evaluation shall use environmental information resulting from existing site-specific studies, or, in the absence of such information, shall use state environmental planning criteria adopted by the board for inclusion in the state water plan after coordinating with staff of Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] and Texas Parks and Wildlife Department;

(2) - (8) (No change.)

(f) - (j) (No change.)

(k) Existing regional water planning efforts. In developing a regional water plan, the regional water planning group shall consider the following:

(1) existing plans and information, including:

(A) - (C) (No change.)

(D) approved [~~certified~~] groundwater conservation district management plans;

(E) - (H) (No change.)

(2) (No change.)

(l) (No change.)

#### *§357.7. Regional Water Plan Development.*

(a) Regional water plan development shall include the following:

(1) - (2) (No change.)

(3) evaluation of adequacy of current water supplies legally and physically available to the regional water planning area for use during drought of record. The term "current" means water supply available at the beginning of this task. This evaluation shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements, other planning and water supply studies, and analysis of water supplies currently available to the regional water planning area. Firm yields for reservoirs shall be presented. Analysis of surface water available during drought of record may be based on operational procedures other than firm yield from reservoirs upon the documented decision of the regional water planning group as long as the amount of water available due to the operational procedure does not exceed the amount of water that would be available using system firm yield. Firm yield is defined as the supply the reservoir can provide during a drought of record using reasonable sedimentation rates and the assumption that all senior water rights will be totally utilized. Until information is provided by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], regional water planning groups may use estimates of the projected amount of surface water that would be available from existing water rights during a drought of record. Once this information is available from the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], the regional water planning group shall incorporate it in its next planning cycle unless better site-specific information is available. Until information is available from the board regarding groundwater availability from modeling, the regional water planning groups may use estimates of the projected amounts as long as they describe the method used to arrive at those estimates. Once the groundwater availability modeling information is available for an area within a region, that regional water planning group shall incorporate such information in its next planning cycle unless better site-specific information is available. The executive administrator, after coordination with staff of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] and the Texas Parks and Wildlife Department, shall identify the methodology, in consultation with representatives of regional water planning groups, to be used by regional water planning groups to calculate water availability during drought of record. The executive administrator shall provide available technical assistance to the regional water planning groups upon request to assist them in selecting appropriate methods and data to be used to determine water supply availability. Water supplies based on contracted agreements shall be based on the terms of the contract, which may be assumed to renew at the contract termination date if the contract contemplates renewal or extensions. Results of evaluations shall be reported:

(A) - (B) (No change.)

(4) - (6) (No change.)

(7) evaluation of all water management strategies the regional water planning group determines to be potentially feasible, including:

(A) water conservation practices. The executive administrator shall provide technical assistance to the regional water planning groups on water conservation practices. The regional water planning group must consider water conservation practices for each need identified in paragraph (4) of this subsection.

(i) The regional water planning group shall include water conservation practices for each user group to which Texas Water Code §11.1271 applies. The impact of these water conservation practices on water needs must be consistent with the requirements in approp-

priate Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] administrative rules related to §11.1271.

(ii) (No change.)

(iii) For each water user group or wholesale water provider that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085(l) applies, the regional water planning group shall include a conservation water management strategy, pursuant to §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. The regional water planning group shall determine and report the projected water use in gallons per capita per day for municipal uses based on its determination of the highest practicable level of water conservation and efficiency achievable. The regional water planning group shall develop conservation water management strategies based on this determination. In preparing the evaluation, the regional water planning group shall seek the input of the water user groups and wholesale water providers as to what is the highest practicable level of water conservation and efficiency achievable, in their opinion, and take that input into consideration. The regional water planning groups shall develop the conservation water management strategy consistent with the guidance provided by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] in its administrative rules that implement Texas Water Code §11.085. The strategy evaluation shall include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable;

(iv) (No change.)

(B) drought management measures including water demand management. The executive administrator shall provide technical assistance to the regional water planning groups on drought management measures. The regional water planning group must consider drought management measures for each need identified in paragraph (4) of this subsection and must include such measures for each user group to which Texas Water Code §11.1272 applies. The impact of these drought management measures on water needs must be consistent with the guidance provided by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] in its administrative rules that implement Texas Water Code §11.1272. If the regional water planning group does not adopt a drought management strategy for a need that goes beyond the requirements of §11.1272, it must document the reason. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods;

(C) - (D) (No change.)

(E) new supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, desalination, water supply that could be made available by cancellation of water rights based on data provided by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], aquifer storage and recovery;

(F) - (G) (No change.)

(8) - (14) (No change.)

(b) - (e) (No change.)

#### §357.12. *Notice and Public Participation.*

(a) Regional water planning groups and any subregional water planning groups shall provide for public participation which shall include the following:

(1) - (4) (No change.)

(5) notice of the public meetings and public hearings required by paragraphs (1), (3), and (4) of this subsection shall be published in a newspaper of general circulation in each county located in whole or in part in the regional water planning area before the 30th day preceding the date of the public meeting or hearing and mailed to, at a minimum, the following:

(A) - (B) (No change.)

(C) each special or general law district or river authority with responsibility to manage or supply water in the regional water planning area based upon lists of such water districts and river authorities obtained from Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~];

(D) each retail public utility, defined as a community water system, that serves any part of the regional water planning area or receives water from the regional water planning area based upon lists of such entities obtained from Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~]; and

(E) each holder of record of a water right for the use of surface water the diversion of which occurs in the regional water planning area based upon lists of such water rights holders obtained from Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~]; and

(6) notice of the public meetings and public hearings shall include:

(A) - (C) (No change.)

(D) information that the regional water planning group will accept written and oral comments at the hearings required by paragraphs (3) and (4) of this subsection, and information on how the public may submit written comments separate from such hearings. The regional water planning group shall specify a deadline for submission of public written comments of not earlier than 60 [30] days after the hearings required by paragraphs (3) and (4) of this subsection.

(b) - (d) (No change.)

(e) On request of the Texas Water Advisory Council, a regional water planning group shall provide the council with a copy of that group's regional water plan.

#### §357.15. *Interaction with Groundwater Conservation District Management Plans.*

(a) A groundwater conservation district may file a written petition with the executive administrator stating that a potential conflict exists between the district's approved [~~certified~~] management plan developed under Texas Water Code, §36.1071 and the an approved state [~~regional~~] water plan. A copy of the petition shall be provided to the affected regional water planning group. The petition must state:

(1) (No change.)

(2) the specific sections and provisions of the approved [~~certified~~] management plan and approved state [~~regional~~] water plan that are in conflict; and

(3) (No change.)

(b) If [~~Within 30 days of receipt of the petition, if~~] the executive administrator determines a conflict exists, the executive administrator will provide technical assistance to and coordinate with the groundwater conservation district and the affected regional water planning group to resolve the conflict. Coordination may include any of the following processes:

(1) - (2) (No change.)

(3) coordinating a formal mediation session between representatives of the groundwater conservation district and the regional water planning group. Not later than the 45th day after the date on which the groundwater conservation district files a petition with the board, if the conflict has not been resolved, the district and the involved regional water planning group shall mediate the conflict. The district and the involved regional water planning group may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved regional water planning group cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the 60th day after the date the mediation is completed as provided by subsections (c) and (d) of this section.

(c) ~~[The executive administrator will inform the parties how long they have to attempt to resolve the conflict.]~~ If the parties do not reach resolution ~~[in that time period]~~, the executive administrator will recommend a resolution to the conflict to the board within 60 days of the date the mediation is completed. Before presenting the issue to the board, the executive administrator will provide the regional water planning group, the groundwater conservation district submitting the petition, and any political subdivision determined by the executive administrator to be affected by the issue ~~15~~ 30 days notice. If the board finds that a conflict exists, the board shall adopt a resolution to the conflict at a public meeting. Resolution may include:

(1) (No change.)

(2) requiring a revision to a district's approved ~~[certified]~~ management plan.

(d) (No change.)

(e) If the board requires a revision to the groundwater conservation district's approved ~~[certified]~~ management plan, the board shall ~~[suspend the certification of the plan and]~~ provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided ~~[required]~~ by the board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board ~~[for certification]~~ pursuant to Chapter 356 of this title (related to Groundwater Management). If the groundwater conservation district disagrees with the decision of the board, the district may appeal the decision to a district court in Travis County, Texas.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600325

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Proposed date of adoption: March 21, 2006

For further information, please call: (512) 475-2052

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

#### CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

##### SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

##### DIVISION 7. CERTIFIED COURT INTERPRETERS

##### 40 TAC §109.913

The Texas Health and Human Services Commission proposes to amend Title 40, Part 2, Chapter 109, §109.913 of the rules of the Department of Assistive and Rehabilitative Services, concerning the training and qualification requirements for taking the certified court interpreter examination administered by the Office for Deaf and Hard of Hearing Services.

The amendment is being proposed to identify the approved courses of instruction in courtroom interpretation skills and training programs for certified court interpreters, as provided by Government Code, §57.022(b)(2).

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the amended rule will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the amended rule will be in effect, the public benefit anticipated as a result of adopting the proposed amendment will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There will be no material economic cost to persons who are required to comply with the rule as proposed for amendment. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed amendment will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

The amendment is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

*§109.913. Training and Qualifications to Take Examination.*

(a) Prior to taking the court interpreter examination, an applicant must provide to the office proof that the applicant has completed instruction in court interpretation in one of the following methods:

(1) Completion of [an] approved courses [eourse] of instruction in courtroom interpretation knowledge and skills with not less than 120 hours of classroom instruction;

(2) Mentoring for not less than 120 hours of actual practice by a certified court interpreter who has been approved to act as a mentor; or

(3) A combination of instruction and mentoring totaling 120 hours.

(b) The current list of approved courses of instruction in courtroom interpretation skills and training programs for interpreters applying for Court Interpreter Certification or certified court interpreters needing continuing education unit credits, may be obtained from the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, TX 78751-2399, or by calling the DARS Inquiries Unit, toll-free, 1-800-628-5115.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600339

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 424-4050



## PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

### CHAPTER 705. ADULT PROTECTIVE SERVICES

#### SUBCHAPTER K. TRAINING AND EDUCATION

##### 40 TAC §705.5101

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §705.5101, concerning what is DFPS's policy on training adult protective services staff, in its Adult Protective Services (APS) chapter. The purpose of the new section is to ensure that actual case examples investigated by APS staff be incorporated into APS training as mandated by Senate Bill (S.B.) 6, 79th Legislature, Regular Session, 2005.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five- year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as

a result of enforcing the section will be that APS staff will have a better understanding of the different types of APS cases investigated, thereby increasing the quality of services provided to vulnerable adults. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Carolyn Bivens at (512) 719-6164 in DFPS's Policy and Innovation Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-340, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

HHSC has determined that the proposed section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §40.035, as amended by §2.03 of Senate Bill 6, 79th Legislature, Regular Session, 2005.

§705.5101. What is DFPS's policy on training Adult Protective Services staff?

(a) DFPS provides the professional development of all Adult Protective Services staff through training and education programs in compliance with Human Resources Code, §40.035, and Subchapter G of Chapter 702 of this title (relating to Training and Education).

(b) Adult Protective Services training incorporates actual case examples that are realistic and indicative of the employee's current or prospective duties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600319

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: March 5, 2006

For further information, please call: (512) 438-3437





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 361. CHILDREN'S HEALTH INSURANCE PROGRAM

##### 1 TAC §361.1

The Texas Health and Human Services Commission withdraws the proposed repeal of §361.1 which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4545).

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600278

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 19, 2006

For further information, please call: (512) 424-6900



#### CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

##### SUBCHAPTER D. PROVIDER REQUIREMENTS

##### 1 TAC §§370.401, 370.403, 370.405, 370.407

The Texas Health and Human Services Commission withdraws the proposed new §§370.401, 370.403, 370.405, and 370.407 which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4546).

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600279

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 19, 2006

For further information, please call: (512) 424-6900



## TITLE 22. EXAMINING BOARDS

## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

##### 22 TAC §501.81

The Texas State Board of Public Accountancy withdraws the proposed amendment to §501.81 which appeared in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4299).

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600298

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: January 20, 2006

For further information, please call: (512) 305-7848



##### 22 TAC §501.86

The Texas State Board of Public Accountancy withdraws the proposed new §501.86 which appeared in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4302).

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600299

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: January 20, 2006

For further information, please call: (512) 305-7848



#### SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

##### 22 TAC §501.90

The Texas State Board of Public Accountancy withdraws the proposed amendment to §501.90 which appeared in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7803).

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600300

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: January 20, 2006

For further information, please call: (512) 305-7848



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 267. PESTICIDE APPLICATORS**

##### **25 TAC §267.3**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services, withdraws the proposed amendment to §267.3, concerning Pesticide Applicators License fees, which appeared in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6919).

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600356

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: January 23, 2006

For further information, please call: (512) 458-7111 x6972



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

#### CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION

##### SUBCHAPTER A. ADMINISTRATION

###### 1 TAC §111.8

The Texas Building and Procurement Commission (TBPC) adopts new §111.8, relating to the establishment of an agency sick leave pool. The rule is adopted without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7959).

The new section establishes an agency sick leave pool.

TBPC received no comments on the new section.

The new section is adopted under the specific authority provided in Texas Government Code §661.002, which grants a state agency the authority to establish a sick leave pool program.

Cross Reference to Statutes: Texas Government Code §661.002 and §2152.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600358

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Effective date: February 12, 2006

Proposal publication date: December 2, 2005

For further information, please call: (512) 463-7829



### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

###### 1 TAC §351.9

The Health and Human Service Commission (HHSC) adopts the amendments to §351.9, Public Complaints. The proposed amendment is adopted with one change to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7330). The text of the rule will be republished.

The amendment to §351.9 outlines the process by which members of the public, consumers, and recipients of health and human services may submit complaints to the Commission. The amendment updates the current complaint process and corrects the contact information for filing complaints with the Commission. The amendment also updates references to Government Code §531.011(d), previously Texas Civil Statutes, Article 4413(502), §12(c).

A non-substantive change was made to subsection (c) of the rule to correct the name of one of the Health and Human Services agencies.

HHSC did not receive any comments regarding the proposed rule during the comment period, which included a public hearing on November 14, 2005.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority and authorizes the Executive Commissioner to adopt rules necessary to implement HHSC's duties under Chapter 531; and §531.011 and §531.409 of the Government Code, which authorize the Executive Commissioner to adopt rules informing the public about how to submit complaints to HHSC.

###### §351.9. *Public Complaints.*

(a) Introduction. The Health and Human Services Commission (HHSC) adopts this rule in compliance with Texas Government Code §531.011(d), which states: The Commissioner by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate agency personnel for the purpose of directing complaints to the Commission.

(b) How and where to make complaints. Complaints may be sent by mail to HHSC at P.O. Box 85200, Mail Code H-700, Austin, Texas 78708-5200, by telephone to 1-877-787-8999, by email to [contact@hhsc.state.tx.us](mailto:contact@hhsc.state.tx.us), or by fax to 512/491-1967. Complaints should be addressed to the attention of the HHSC Office of the Ombudsman.

(c) Types of complaints. HHSC accepts complaints about functions, services, programs or staff of the Health and Human Services Commission and the health and human services departments subject to its oversight: the Department of Assistive and Rehabilitative Services (DARS), Department of Aging and Disability Services (DADS), Department of State Health Services (DSHS), and Department of Family Protective Services (DFPS).

(d) Procedure for resolving complaints. The HHSC Office of the Ombudsman coordinates with the appropriate HHSC program or health and human services (HHS) department to assist in resolving complaints. The Office of the Ombudsman or the appropriate HHSC program or HHS department responds directly to the complainant. The Office of the Ombudsman may follow-up if it believes the HHSC program's or HHS department's response to the complainant is inadequate. Complaints are acknowledged within 5 business days and resolved within 30 calendar days of receipt. A copy of this complaint process is available in writing upon request to the HHSC Office of the Ombudsman and is also available on the HHSC Office of the Ombudsman website at <http://www.hhs.state.tx.us/OMB>.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 19, 2006.

TRD-200600277

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 15, 2006

Proposal publication date: November 11, 2005

For further information, please call: (512) 424-6900



## **TITLE 22. EXAMINING BOARDS**

### **PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### **CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER D. CPA EXAMINATION**

##### **22 TAC §511.87**

The Texas State Board of Public Accountancy adopts an amendment to §511.87, concerning Loss of Credit without changes to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7804). The text of the rule will not be republished.

The amendment to §511.87 will delete the phrase "and this action shall be ratified by the board" in order to expedite the release of information regarding exam credit to candidates, now that such information is generated on a monthly basis.

The amendment will function by expediting the release of information regarding exam credit to candidates.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600301

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: February 9, 2006

Proposal publication date: November 25, 2005

For further information, please call: (512) 305-7848



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 1. GENERAL ADMINISTRATION**

##### **SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES**

##### **28 TAC §1.414**

The Commissioner of Insurance adopts amendments to §1.414, concerning assessment of maintenance taxes and fees for payment in the year 2006. The amended section is adopted without changes to the text proposed in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7804).

The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2006 to provide the revenue necessary to fund appropriations made by the Legislature to fund regulation of the insurance industry in Texas. In addition, the amendments are necessary to set maintenance tax assessment rates to implement HB 7, Acts 2005, 79th Legislature, Regular Session ch. 265, eff. Sept. 1, 2005, which transferred the functions of the Texas Workers' Compensation Commission (TWCC) to the Department's newly created Division of Workers' Compensation (DWC) and established the Office of Injured Employee Counsel (OIEC), a separate agency to help injured employees in the workers' compensation system. HB 7 transferred funding of the DWC and the OIEC from the State General Revenue Fund to the Department's operating account, as provided in the Labor Code §403.001, and granted authorization to the Commissioner of Insurance to assess maintenance taxes for the operation of the DWC and to prosecute workers' compensation insurance fraud in Texas, as provided in the Labor Code §403.002 and §403.003. The amended section is also necessary to set assessment rates for workers' compensation self-insurance groups to implement HB 2095, Acts 2003, 78th Legislature, Regular Session, ch. 275, eff. Sept. 1, 2003 codified as Labor Code Chapter 407A.

Insurance Code §201.001 creates the Texas Department of Insurance operating account and authorizes the Commissioner to administer the money in the account and to spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001 also provides that the money deposited to the credit of the account may be used for any purpose for which money in the account is authorized to be used by law. Section 251.001 of the Insurance Code provides that collected maintenance taxes must be deposited in the general revenue fund and reallocated to the Texas Department of Insurance operating account. The General

Appropriations Act (SB 1, 79th Legislature, Regular Session) mandates that the Department's operating account in 2006 be used to pay the expenses for the operation of the Department as well as the expenses for the operation of the newly created DWC within the Department; the OIEC, a newly created agency which assumed some functions of the TWCC; and other state agencies. The operation of the DWC was formerly funded by maintenance taxes assessed by the TWCC. The functions to be performed by the OIEC were funded from the maintenance taxes assessed by the TWCC.

Several statutes require the Department to set maintenance tax assessment rates for the various lines of insurance to fund the appropriations made by the legislature from the Department's operating account. Section 1.414 sets rates for maintenance tax assessment on individual lines of insurance and applies those rates to the gross premium receipts for the calendar year 2005, or some other basis specified by statute, to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts. The factors considered in the Department's rate setting process are: (i) the appropriations made by the legislature, including the legislative mandates to fund the expenses of the DWC and the OIEC and to fund Department and OIEC employee salary increases; ii) the cost to regulate each line of insurance; (iii) the Department operating account ending balance; (iv) non-maintenance tax revenues; and (v) the statutory caps for each line of insurance. In the absence of changes in these factors, maintenance tax rates and revenues should remain constant from year to year. Based on material changes in appropriations made by the Legislature and the prior year Department operating account ending balance, the Department has determined that approximately \$54 million is needed from maintenance taxes to fund the Department's operating account legislative appropriations, excluding the \$52 million needed to fund DWC and OIEC. Based on these factors the Department determined that a total of approximately \$106 million is needed from maintenance taxes to fund the insurance operating account legislative appropriations for 2006. Approximately \$52 million of the \$106 million is needed to fund the insurance operating account legislative appropriations for the DWC and OIEC operating expenses, and \$54 million is needed to fund the remainder of the insurance operating account legislative appropriations, including the operation of the Department. Any comparison of the proposed rates for 2006 to the rates adopted for 2005, however, must exclude the proposed rates for the DWC and the OIEC and their projected revenue need of \$52 million because that projected revenue amount was not included in the calculations for the 2005 rates. The \$54 million maintenance tax need is an increase of \$20 million from the 2005 maintenance tax need of \$34 million. The increased need requires rates above the 2004 and 2005 adopted rates. The proposed 2006 rates are projected by the Department to produce the revenue of approximately the 2003 amount of \$55 million. The rates adopted in 2005, as well as those adopted in 2004, were unusually low due to mandatory budget reductions by the Legislature that resulted in lower spending than expected and a one-year revenue collection greater than expected because of higher premiums than projected. Therefore, the resulting balance in the Department's operating account created by the budget reductions and greater revenues than expected resulted in the lower rates in 2004 and 2005. Also, new legislative mandates that require additional

funding of approximately \$11 million from the Department's operating account further increase the total amount needed to fund the Department's operating account legislative appropriations for 2006. Therefore, the resulting ending balance in the Department's operating account created by the budget reductions and greater revenues than expected resulted in the lower rates in 2004 and 2005. Also new legislative mandates to provide additional funding of approximately \$11 million from the Department's operating account further increase the total amount needed to fund the Department's operating account legislative appropriations for 2006. These new mandates, funding a state wide salary increase for employees of the Department, and a lower ending balance in the Department's operating account are the primary reasons for the increase in maintenance tax rates for 2006, excluding DWC and OIEC, a separate agency to help injured employees in the workers' compensation system.

The maintenance tax rates needed to fund the DWC and OIEC in 2006, as determined by the Department, are 15 percent higher than the 2005 rates. This is the result of several factors. HB 7 transferred funding of the DWC and the OIEC from the State General Revenue Fund to the Department's operating account. Maintenance tax rates set by the former TWCC were set to fund operations of that agency through December of each year. The transfer of the funds to the Department's operating account, however, requires revenues from the maintenance taxes to fund operations of the DWC and the OIEC through April of each year; this means that the funding period is extended for an additional four months which contributes to the rate increase. Additionally, the rates set by TWCC in 2004 were set low in order to spend down available funds. The Department incorporated provisions of HB 7 into the rate setting process for the newly created DWC within the Texas Department of Insurance and the OIEC, a separate new agency. All of these factors together contributed to the 15 percent increase in the maintenance tax assessment rate to fund the DWC and OIEC operating expenses.

Section 1.414 sets rates of assessment and applies those rates to the gross premium receipts for the calendar year 2005, or some other basis specified by statute, to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts. The Department anticipates the adopted rates will produce revenue of \$106,221,189 to fund appropriations made by the Legislature. The amended section implements HB 7, which transferred the functions of the TWCC to the Department's new created DWC and established the OIEC, by adding new paragraphs (5) and (6) of subsection (a) and subsection (d) to include the maintenance tax rates previously assessed by the TWCC. The amended section also implements HB 2095, Acts 2003, 78th Legislature, Regular Session, ch.275, eff. Sept. 1, 2003, codified as Labor Code Chapter 407A by adding paragraph (7) to subsection (a) set a rate of assessment for workers' compensation self-insurance groups.

Comment: Commenters expressed concern over what they characterized as the substantial increase in the proposed rates of assessment for 2006 over the rates adopted for 2005.

Agency Response: The Department estimates that the proposed rates will produce \$106 million in 2006 which is needed to fund legislative appropriations for 2006 from the Department's operating account. An accurate comparison of the proposed rates for

2006 to the rates adopted for 2005, however, must exclude the proposed rates for the DWC and the OIEC and their projected revenue need of \$52 million, because that projected revenue amount was not included in the calculations for 2005. The factors considered in the Department's rate setting process are: (i) the appropriations made by the legislature, (ii) the cost to regulate each line of insurance, (iii) prior year fund balance, (iv) non-maintenance tax revenues, and (v) statutory caps for each line of insurance. In the absence of changes in these factors, maintenance tax rates and revenues should remain constant from year to year. Based on material changes in appropriations made by the Legislature and the prior year Department operating account ending balance, the Department has determined that approximately \$54 million is needed from maintenance taxes to fund the Department's operating account legislative appropriations, excluding the \$52 million needed to fund DWC and OIEC. The \$54 million maintenance tax need is an increase of \$20 million from the 2005 maintenance tax need of \$34 million. The increased need requires rates above the 2004 and 2005 adopted rates. The proposed 2006 rates are projected by the Department to produce the revenue of approximately the 2003 amount of \$55 million. Also, any accurate rate comparison between 2005 rates and 2006 proposed rates must consider that the rates adopted in 2005, as well as in 2004, were unusually low due to legislatively mandated budget reductions that resulted in lower spending than expected and a one-year revenue collection greater than expected because of higher premiums than projected. Therefore, the resulting ending balance in the Department's operating account created by the budget reductions and greater revenues than expected resulted in the lower rates in 2004 and 2005. Also new legislative mandates to provide additional funding of approximately \$11 million from the Department's operating account further increase the total amount needed to fund the Department's operating account legislative appropriations for 2006. These new mandates, funding a state wide salary increase for employees of the Department, and a lower ending balance in the Department's operating account are the primary reasons for the increase in maintenance tax rates for 2006, excluding DWC and OIEC.

**Comment:** Commenters questioned the Legislature's inclusion of certain mandates in the General Appropriations Act in determining the proposed rates, because those mandates did not provide funding for the Department or were unrelated to the regulation of insurance. They questioned whether the proposed rates should impose a tax which provides funds other than those necessary to pay the Department's expenses for regulating insurance. Some commenters additionally asserted that the maintenance tax statutes conflict with certain mandates in the General Appropriations Act because the maintenance tax statutes are substantive laws that require funds raised from the maintenance taxes to be used exclusively to pay the Department's expenses. They stated this conflict invalidated those mandates in the General Appropriations Act and that the Department should not include those mandates in determining the rates of assessment.

**Agency Response:** It is the Department's position that the maintenance tax rates proposed for 2006 are properly determined within the Department's statutory authority and in accordance with legally valid legislative mandates in the General Appropriations Act (SB 1, 79th Legislature, Regular Session). Insurance Code §201.001 creates the Texas Department of Insurance operating account and authorizes the Commissioner to administer the money in the account and to spend money from the ac-

count in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001 also provides that the money deposited to the credit of the account may be used for any purpose for which money in the account is authorized to be used by law. Section 251.001 of the Insurance Code provides that collected maintenance taxes must be deposited in the general revenue fund and reallocated to the Texas Department of Insurance operating account. The General Appropriations Act (SB 1, 79th Legislature, Regular Session) mandates that the Department's operating account in 2006 be used to pay the expenses for the operation of the Department as well as the expenses for the operation of the newly created DWC within the Department; the OIEC, a newly created agency which assumed some functions of the TWCC; and other state agencies. The operation of the DWC was formerly funded by maintenance taxes assessed by the TWCC. The functions to be performed by the OIEC were funded from the maintenance taxes assessed by the TWCC.

Several statutes require the Department to set maintenance tax assessment rates to fund the appropriations made by the Legislature from the Department's operating account. These maintenance tax statutes provide that the maintenance taxes are to be deposited in the Department's operating account. None of these statutes provide that the revenues from the maintenance taxes are exclusively for the use of the Department's expenses for regulating insurance. The Department's operating account is used to pay the expenses for the operation of the Department and other state agencies as mandated by the legislature in the General Appropriations Act. Since the Legislature in the General Appropriations Act appropriated funds from the Department's operating account for specific designated purposes, the Department and the Commissioner in setting the maintenance tax rates are responding to the legislative intent expressed in the General Appropriations Act.

In addition, the Department does not agree with the commenters that there is conflict between the maintenance tax statutes and certain mandates in the General Appropriations Act. It is the Department's position that the maintenance tax statutes are in harmony with the General Appropriations Act because they do not state that the revenues from the taxes are exclusively for the use of the operation of the Department. This interpretation of the laws is supported by the Code Construction Act, Government Code Chapter 311. Government Code §311.021 provides that in interpreting an enacted statute it is presumed that the entire statute is intended to be effective. The application of this statutory principle to the General Appropriations Act results in the interpretation that every provision of that Act, including the legislative mandates that the commenters argue cannot be legally funded with maintenance taxes, must be implemented, i.e., funded, by the Department in accordance with the method of funding directed by the Legislature. Further support for this interpretation is provided in Section 311.025 of the Government Code which provides that in the event of an irreconcilable conflict between enacted statutes, whether at the same or different sessions, the statute latest in date of enactment prevails. The General Appropriations Act, which was adopted on June 18, 2005 is clearly the later enactment because the various maintenance tax statutes were enacted in previous sessions except for those enacted in HB 7 which were adopted on September 1, 2005. Therefore, under this statutory legal principle, the Commissioner of Insurance is required to include the legislative mandates in the General Appropriations Act in determining the rates of assessment under the maintenance tax statutes.

An analysis of the Legislature's authority to appropriate state money also supports the Department's position that the maintenance tax rates proposed for 2006 are properly determined within the Department's statutory authority and in accordance with legally valid legislative mandates. The appropriation of state money is a legislative function. Articles III and VIII of the Texas Constitution grant the Legislature the authority to enact legislation and to raise state revenue. (Tex. Att'y Gen. Op. No. JM-772 (1987): "A corollary of the Legislature's exclusive control over the appropriation of state funds is its exclusive control over how state funds are to be spent.") Section 6 of Article VIII of the Texas Constitution provides that no money shall be drawn from the state treasury unless pursuant to an appropriation "made by law." (Bullock v. Calvert, 480 S.W.2d 367, 370-371 (Tex. 1972).) Section 6 has been construed consistently to require an appropriation by the Legislature before any money can be paid out of the state treasury. (Lightfoot v. Lane, 140 S.W. 89 (Tex. 1911); Pickle v. Finley, 44 S.W. 480 (Tex. 1898).) As such, funds in the state treasury may not be expended without a legislative appropriation. An appropriation may be effected either by the constitution, by statute, or by a general appropriations bill. The constitution vests in the Legislature authority to direct how public funds shall be used and to allocate the funds among state agencies. TEX. CONST. art. III, §§35, 44; art. VIII, § 6. The Legislature exercises this power by enacting general laws defining the agency's powers and duties and by appropriating funds to the agency to carry out its legislative mandate. The Legislature appropriated funds to the Department so that the Department can carry out its legislative mandate. The Legislature's authority to appropriate funds to other entities from the Department's operating account is derived from its authority to allocate state funds among state agencies. The Department's expenditure of funds from its operating account is to carry out the Department's statutory duties and obligations. The funds appropriated by the Legislature to other entities are to be expended by those entities to accomplish their legislative purposes. Because the funds in the Department's operating account are generated by the assessment of maintenance taxes on insurers and other entities regulated by the Department does not mean that the Legislature lacks the authority to appropriate or allocate those funds to other entities. Therefore, it is the Department's position that the Commissioner is properly exercising the statutory authority provided in §201.001 of the Insurance Code, which permits the Commissioner to administer and spend money in the operating account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. For these reasons the Department does not find that it is legal or feasible to adjust the maintenance tax rates in accordance with the commenters' objections.

**Comment:** A commenter stated that the industry expected workers' compensation costs to go down and expressed surprise that the maintenance tax rates related to the DWC and the OIEC were increasing.

**Agency Response:** The 15 percent increase in the maintenance tax rates to fund the DWC and OIEC was the result of several factors. The Department incorporated provisions of HB 7 into the rate setting process for the newly created DWC within the Texas Department of Insurance and the OIEC, a separate new agency established to help injured employees in the workers' compensation system. HB 7 also transferred funding of the DWC and the OIEC from the State General Revenue Fund to the Department's operating account, as provided in the Labor Code §403.001, and granted authorization to the Commissioner of Insurance to as-

sess maintenance taxes for the operation of the DWC and to prosecute workers' compensation insurance fraud in Texas, as provided in the Labor Code §403.002 and §403.003. Maintenance tax rates set by the former TWCC were set to fund operations of that agency through December of each year. The transfer of the funds to the Department's operating account, however, requires revenues from the maintenance tax to fund operations of the DWC and the OIEC through April of each year; this means that the funding period is extended for an additional four months which contributes to the rate increase. Additionally the rate set by TWCC in 2004 was set low in order to spend down available funds. All of these factors together contributed to the 15 percent increase in the maintenance tax assessment rate to fund the DWC and OIEC operating expenses. In accordance with the Legislature's appropriations from the Department's operating account to fund the DWC and the OIEC, the Department proposed maintenance tax rates to provide funding of \$52 million.

**For:** None.

**Against:** American Council of Life Insurers, American Insurance Association, State Farm Insurance Companies, Texas Association of Health Plans, Texas Association of Life & Health Insurers.

The amendments are adopted under the Insurance Code §§201.001, 251.001, 252.001 - 252.003, 253.001 - 253.003, 254.001 - 254.003, 255.001 - 255.003, 257.001 - 257.003, 258.002 - 258.004, 259.002 - 259.004, 260.001 - 260.003, 271.002 - 271.006 and §36.001; Labor Code §403.002, §403.003, §407.103, §407A.301, and §407A.302; and the General Appropriations Act, SB 1, 79th Legislature, Regular Session, Article VIII. Insurance Code §201.001 creates the Texas Department of Insurance operating account and provides that the Commissioner shall administer the money in the account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act; it also provides that the money deposited to the credit of the account may be used for any purpose for which money in the account is authorized to be used by law. The General Appropriations Act enacted by the 79th Legislature mandates that the Department's operating account in 2006 be used to pay the expenses for the operation of the Department as well as the expenses for the operation of the newly created DWC within the Department and the OIEC, a separate agency. The following statutes require the Department to set assessment rates to fund the appropriations made by the legislature from the Department's operating account. Section 251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code, Title 3, Subtitle C, Insurance Maintenance Taxes. Sections 252.001 - 252.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums for fire and allied lines coverage, including inland marine. Sections 253.001 - 253.003 impose a maintenance tax on each authorized insurer based on the insurer's gross insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Sections 254.001 - 254.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums for motor vehicle coverage. Sections 255.001 - 255.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums for workers' compensation coverage. Sections 257.001 - 257.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums collected from Texas residents for life, accident, and health coverage and the gross considerations collected for annuity and endowment contracts. Sections 258.002 - 258.004

impose a per capita maintenance tax on each authorized health maintenance organization based on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Sections 259.002 - 259.004 impose a maintenance tax on each authorized third-party administrator based on each administrator's correctly reported administrative or service fees. Sections 260.001 - 260.003 impose a maintenance tax on each insurer, except for a governmental entity, writing workers' compensation based on the insurer's correctly reported gross workers' compensation insurance which will pay the cost of administering the DWC, OIEC and support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer. Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. This maintenance tax is to pay for: the administration of the DWC; the prosecution of workers' compensation insurance fraud in Texas; the research functions of the Department under Labor Code Chapter 405; and the administration of the OIEC under Labor Code Chapter 404. Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code §255.001 based on gross premium for the group's retention; this is to be used for the administrative costs incurred by the Department in administering Labor Code, Chapter 407A. Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600231  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: February 2, 2006  
Proposal publication date: November 25, 2005  
For further information, please call: (512) 463-6327



## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

### SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

#### 28 TAC §7.1012

The Commissioner of Insurance adopts amendments to §7.1012, concerning assessments to cover the expenses of examining domestic and foreign insurance companies. The

amended section is adopted without changes to the proposed text published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7806).

The amendments are necessary to adjust the rates of assessment to be levied against and collected from each domestic and foreign insurance company examined during the 2006 calendar year.

Section 7.1012 provides the method and rates of assessment for examination expenses of foreign and domestic insurance companies. Rates of assessment are levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 2005 calendar year, and from each foreign insurance company examined during the calendar year 2006 based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The department anticipates that the adopted rate will produce revenue of \$9,945,440 to the state's general revenue fund. The assessments made under authority of the adopted section are in addition to, and not in lieu of, any other charge which may be made under the law, including Insurance Code Article 1.16.

The department did not receive any comments on the proposal.

The amendments are adopted under the Insurance Code Article 1.16 and §36.001. Article 1.16(a) and (b) authorize the Commissioner of Insurance to make assessments necessary to cover the expenses of all examinations of domestic insurance companies by the department or under its authority and to cover all the expenses and disbursements necessary to comply with the provisions of the Insurance Code Articles 1.16, 1.17, and 1.18, in such amounts as the Commissioner certifies to be just and reasonable. Article 1.16(f) provides that expenses incurred in the examination of foreign insurers by department examiners and other department personnel shall be collected by the Commissioner by assessment. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2006.

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Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
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For further information, please call: (512) 463-6327



## CHAPTER 25. INSURANCE PREMIUM FINANCE

### SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

#### 28 TAC §25.88



The Commissioner of Insurance adopts an amendment to §25.88 concerning an assessment which will be used to cover the general administrative expenses of the department's regulation of insurance premium finance companies. The amended section is adopted without changes to the proposed text published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7809).

The amendment is necessary to adjust the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies.

Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2006 and collects the assessment from each insurance premium finance company on the basis of a percentage of the company's total loan dollar volume for the 2005 calendar year. The department estimates that the assessment will yield \$153,126 for the state's general revenue fund.

The department did not receive any comments on the proposal.

The amendment is adopted under the Insurance Code §§651.003, 651.006(a)(2), and 36.001. Section 651.003 authorizes the Commissioner to adopt and enforce rules necessary to carry out the provisions of the Insurance Code, Title 5, Chapter 651, concerning the regulation of insurance premium finance companies. Section 651.006 requires each insurance premium finance company licensed by the department to pay an amount imposed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600233

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: February 2, 2006

Proposal publication date: November 25, 2005

For further information, please call: (512) 463-6327



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **CHAPTER 55. LAW ENFORCEMENT**

## **SUBCHAPTER D. OPERATION GAME THIEF FUND**

### **31 TAC §§55.111, 55.113, 55.114**

The Operation Game Thief Committee adopts amendments to §§55.111, 55.113, and 55.114, concerning Operation Game Thief (OGT), without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5924).

Operation Game Thief is a type of crime-stopper program designed to encourage the public to assist the Texas Parks and Wildlife Department (TPWD) in enforcing conservation laws by reporting unlawful conduct. Created in 1981 by the 67th Texas Legislature, the program offers rewards of up to \$1,000 for information leading to the arrest and conviction of persons who commit crimes involving wildlife resources. The program is privately funded but administered by TPWD under the provisions of Parks and Wildlife Code, Chapter 12, Subchapter C.

House Bill 2032, enacted by the 79th Texas Legislature, Regular Session, altered the provisions of Parks and Wildlife Code, §12.203, to increase the scope of its applicability with respect to violations of both the Parks and Wildlife Code and other statutes. Prior to the enactment of House Bill 2032, the provisions of Parks and Wildlife Code, §12.203, provided that rewards could be paid by the OGT committee only for a flagrant violation of the Parks and Wildlife Code or a regulation adopted under the Parks and Wildlife Code related to the take, possession, or sale of an animal, bird, reptile, or fish.

House Bill 2032 amended the provisions of Parks and Wildlife Code, §12.203, to remove the requirement that a violation be flagrant in order to meet the standards for qualifying for reward and extends the applicability of the section to include violations of specific provisions of statutes other than the Parks and Wildlife Code that are routinely enforced by TPWD law enforcement personnel, such as statutes governing water pollution, solid waste dumping, antiquities destruction or damage, arson, criminal mischief, criminal trespass, theft, tampering with identification numbers, tampering with a governmental record, intoxication assault, and intoxication manslaughter.

The amendment to §55.111, concerning Definitions, removes all references to 'flagrant' violations and rewords the provisions of paragraph (11), regarding the definition of 'line of duty.' The current definition of 'line of duty' can be misinterpreted to mean that a peace officer of the department who dies while discharging his or her lawful duties at a time that he or she was not actually scheduled for work is not eligible for benefits. The amendment clarifies that the family of a department peace officer is eligible for OGT death benefits if the peace officer died while acting as a peace officer. The amendment is necessary to eliminate the use of a term that is no longer meaningful as a result of House Bill 2032, and to prevent confusion and misunderstanding concerning the circumstances under which death benefits can be paid by the OGT committee.

The amendment to §55.113, concerning Reporting Violations; Eligibility of Applicant, eliminates references to 'flagrant' violations, repeats the statutory provision that a person is eligible for reward only for reporting the specific violations listed in Parks and Wildlife Code, §12.203, and regulations adopted under those statutes. The amendment is necessary to eliminate the use of a term that is no longer meaningful as a result of House Bill 2032.

The amendment to §55.114, concerning Rewards; Payment, eliminates references to 'flagrant' violations and stipulated that the amount of a reward will be based on a formula, rather than on 'the degree of flagrancy of each violation' as is currently stipulated. The amendment is necessary to create a mechanism utilizing some other standard than flagrancy, which was eliminated as a criterion by House Bill 2032.

The amendment to §55.111 will function by eliminating obsolete language and clarifying definitions.

The amendment to §55.113 will function by eliminating an obsolete term.

The amendment to §55.114 will function by eliminating an obsolete term and by stipulating the methodology by which reward will be calculated.

The department received no comments concerning adoption of the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, §12.201, which authorizes the Operation Game Thief Committee to adopt rules for the implementation of the Operation Game Thief program and maintenance of the Operation Game Thief fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2006.

TRD-200600273

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: February 7, 2006

Proposal publication date: September 16, 2005

For further information, please call: (512) 389-4775



## PART 10. TEXAS WATER DEVELOPMENT BOARD

### CHAPTER 380. ALTERNATIVE DISPUTE RESOLUTION

The Texas Water Development Board (board) adopts amendments to 31 TAC Chapter 380, Alternative Dispute Resolution. Specifically, the board adopts amendments to §§380.4, 380.22, and 380.24, without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7996) and will not be republished. These amendments are adopted in order to make the rules consistent with House Bill 1940, 79th Legislature, Regular Session (2005).

The board amends §380.4 to add the statement that a contractor is not prevented from asserting a counterclaim or right of offset against the board if the board has filed suit against the contractor in court. This addition is in response to a similar change House Bill 1940 made to §2260.005, Government Code. The proposed amendment tracks the language of House Bill 1940.

The board amends §380.22(d) to change the deadline for delivering notice of any counterclaim to the contractor from 90 days to

60 days. This amendment is in response to the same timetable change House Bill 1940 made to §2260.051, Government Code. The amendment tracks the language of House Bill 1940.

The board also amends §380.24(b) to state that negotiations will begin no later than the 120th day after the date the contractor's notice of claim is received. This amendment is in response to the deadline change House Bill 1940 made to §2260.052, Government Code. The amendment tracks the language of House Bill 1940. The board also deletes §380.24(c) due to the fact that the statutory language that this was based on was repealed by House Bill 1940. Specifically, House Bill 1940 repealed §3360.052(b), Government Code, so that state agencies are no longer able to delay the beginning of negotiations until after the 180th day after the date of the event giving rise to the claim. The board amends §380.24(d) - (h). First, the subsections are relettered to account for the deletion of §380.24(c). Second, the deadline for the parties to agree to mediation or another form of assisted negotiations is changed from 270 days to 120 days. This amendment is in response to the same deadline change House Bill 1940 made to §2260.056, Government Code. The amendment tracks the language of House Bill 1940.

The board amends the relettered §380.24(d) and (f) to correct the citation to §380.24(f). Due to the deletion of §380.24(c), the correct citation is now §380.24(e).

Lastly, the board amends relettered §380.24(g) to correct the citation to subsections (c) and (d). Due to the board deleting subsection (c), the citation is now only to subsection (b).

No public comments were received on the proposed rules that were published in the December 2, 2005, edition of the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 31 TAC §380.4

These amendments are adopted under the authority of the Texas Water Code §6.101 and Chapter 2260 of the Texas Government Code, which provide the Texas Water Development Board with the authority to adopt rules necessary to govern the dispute resolution processes for breach of contract claims.

The statutory provision affected by the amendments is Texas Government Code, Chapter 2260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600321

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Effective date: February 9, 2006

Proposal publication date: December 2, 2005

For further information, please call: (512) 475-2052



## SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES

### 31 TAC §380.22, §380.24

These amendments are adopted under the authority of the Texas Water Code §6.101 and Chapter 2260 of the Texas Government Code, which provide the Texas Water Development Board with the authority to adopt rules necessary to govern the dispute resolution processes for breach of contract claims.

The statutory provision affected by the amendments is Texas Government Code, Chapter 2260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600322

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Effective date: February 9, 2006

Proposal publication date: December 2, 2005

For further information, please call: (512) 475-2052



## CHAPTER 382. WATER INFRASTRUCTURE FUND

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§382.1, 382.3, and 382.22, concerning Water Infrastructure Fund without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7998) and will not be republished. The amendments are adopted for cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts an amendment to §382.1, Scope of Chapter, to change the reference to the Subchapter of Chapter 15 of the Texas Water Code under which the Water Infrastructure Fund is established, from Subchapter O to Subchapter Q. This amendment is consistent with a change to Chapter 15 of the Texas Water Code made by House Bill 3505 of the 78th Legislature, Regular Session (2003).

The board adopts an amendment to §382.3, Use of Funds, to delete the current text of §382.3(c), which limits funding to political subdivisions for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project to no more than 10% of financial assistance budgeted by the board to be made available from the Water Infrastructure Fund in a fiscal year. This amendment is consistent with a change to the §15.974 of the Texas Water Code made by Senate Bill 509 of the 79th Legislature, Regular Session (2005).

Current §382.22(b)(1)(L)(iii) requires that the applicant submit an affidavit from its authorized representative that states that there is no pending or threatened litigation against the applicant that would materially adversely affect the financial condition of the applicant or to issue the debt. The board amends this subsection by adding the requirement that the affidavit state that either there is no pending or threatened judgments, orders, or fines from the Texas Commission on Environmental Quality or any other federal, state, or local government, or to identify any such

judgments, orders, or fines. The reason that the board adopts this amendment is that the board currently requires this information as part of its Drinking Water State Revolving Fund Program and that by including this requirement in this program, the board develops consistency between its program requirements. Also, the board believes that as a state agency it should be aware of incidents of non-compliance by the applicant with the other arms of government prior to approving financial assistance to an applicant.

No comments were received on the proposed amendments.

## SUBCHAPTER A. INTRODUCTORY PROVISIONS

### 31 TAC §382.1, §382.3

The amendments are adopted under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and Texas Water Code §15.977 which requires the Board to adopt rules relating to the Water Infrastructure Fund.

Cross reference to statute: Water Code, Chapter 15, Subchapter Q.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600326

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Effective date: February 9, 2006

Proposal publication date: December 2, 2005

For further information, please call: (512) 475-2052



## SUBCHAPTER B. APPLICATION PROCEDURES

### 31 TAC §382.22

The amendments are adopted under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and Texas Water Code §15.977 which requires the Board to adopt rules relating to the Water Infrastructure Fund.

Cross reference to statute: Water Code, Chapter 15, Subchapter Q.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600327

Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Effective date: February 9, 2006  
Proposal publication date: December 2, 2005  
For further information, please call: (512) 475-2052

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## CHAPTER 384. RURAL WATER ASSISTANCE FUND

The Texas Water Development Board (the board) adopts amendments to 31 TAC §384.1 and §384.22(b)(1)(L), concerning the Rural Water Assistance Fund without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7999) and will not be republished. The board has reviewed 31 TAC Chapter 384 pursuant to Texas Government Code §2001.039. As a result of this review, the board amends §384.1 in order to be consistent with recent statutory amendments (and other board rules) and amends §384.22 to align the requirement therein with other board programs.

The board adopts an amendment to §384.1, Scope of Chapter, to change the reference to the Subchapter of Chapter 15 of the Texas Water Code under which the Rural Water Assistance Fund is established, from Subchapter P to Subchapter R. This amendment is made in order for the rule to be consistent with a statutory amendment made by the 78th Legislature.

Current §384.22(b)(1)(L)(iii) requires that the applicant submit an affidavit from its authorized representative that states that there is no pending or threatened litigation against the applicant that would materially adversely affect the financial condition of the applicant or to issue the debt. The board amends this subsection by adding the requirement that the affidavit state that either there is no pending or threatened judgments, orders, or fines from the Texas Commission on Environmental Quality or any other federal, state, or local government, or to identify any such judgments, orders, or fines. The reason that the board adopts this amendment is that the board currently requires this information as part of its Drinking Water State Revolving Fund Program and that by including this requirement in this program, the board develops consistency between its program requirements. Also, the board believes that as a state agency it should be aware of incidents of non-compliance by the applicant with the other arms of government prior to approving financial assistance to an applicant.

No comments were received on the proposed amendments.

### SUBCHAPTER A. INTRODUCTORY PROVISIONS

#### 31 TAC §384.1

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.995 which authorize the board to publish rules to carry out its duties provided in the Water Code and for this program in particular.

Cross reference to statute: Water Code, Chapter 15, Subchapter R.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600328  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Effective date: February 9, 2006  
Proposal publication date: December 2, 2005  
For further information, please call: (512) 475-2052

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## SUBCHAPTER B. APPLICATION PROCEDURES

### 31 TAC §384.22

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.995 which authorize the board to publish rules to carry out its duties provided in the Water Code and for this program in particular.

Cross reference to statute: Water Code, Chapter 15, Subchapter R.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600329  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Effective date: February 9, 2006  
Proposal publication date: December 2, 2005  
For further information, please call: (512) 475-2052

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## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 25. MEMBERSHIP CREDIT

##### SUBCHAPTER B. COMPENSATION

#### 34 TAC §25.34

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amended §25.34, concerning changes to the administration of the membership waiting period. The amended section is adopted without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7192).

The amendments to §25.34 will allow TRS to delete unnecessary provisions relating to administration of the 90-day membership waiting period, which was enacted by the 78th Legislature (Act of June 2, 2003, 78th Legislature, Regular Session, Chapter 201, §43, 2003 Texas General Laws 812, 824) . The statute requiring the 90-day waiting period for TRS membership expired by opera-

tion of law on September 1, 2005. Consequently, TRS proposes to retain only the provisions that may be useful as reference in the administration of the purchase of waiting period service credit by eligible members who were affected by the waiting period.

With appropriate amendments, the text of subsection (i) of the former rule is retained and renumbered. This subsection addresses when a person may obtain membership service credit for a school year in which the person was required to observe the membership waiting period. This provision will be helpful for years to come in the administration of membership service credit for school years in which members were subject to the waiting period and did not work a sufficient length of time after the waiting period to obtain a year of membership service credit for the year. The retained rule text also preserves the explanation of whether membership service may be credited in years in which a waiting period was applicable.

TRS received no public comments regarding the proposed amendments.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: §822.001, Government Code, amended by Act of June 2, 2003, 78th Legislature, Regular Session, Chapter 201, §43, subsection (f), 2003 Texas General Laws 812, 825, which provides for the expiration of the 90-day membership waiting period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600294  
Ronnie G. Jung  
Executive Director  
Teacher Retirement System of Texas  
Effective date: February 9, 2006  
Proposal publication date: November 4, 2005  
For further information, please call: (512) 542-6438



## SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

### 34 TAC §25.163

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amended §25.163, concerning changes to purchase of additional service credit under the service credit purchase option. The amended section is adopted without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7193).

The amendments to §25.163 will allow TRS to implement House Bill 3169 and Senate Bill 1691, 79th Legislature, Regular Session (2005), which repeal the option to purchase one, two, or three years of additional service credit under §823.405, Government Code, effective January 1, 2006. The amendments provide that, unless the service credit is purchased by December 31, 2005 or an installment payment agreement is filed with TRS

by that date, the opportunity to purchase this service credit will be permanently forfeited. TRS is not proposing changes to the three tables attached as graphics to the section that are used to calculate the costs to purchase one, two, or three years of service.

TRS received no public comments regarding the proposed amendments.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: House Bill 3169 and §55(b) and §62 of Senate Bill 1691, 79th Legislature, Regular Session (2005), repealing §823.405, Government Code, but providing that the repeal does not affect an installment agreement entered into before January 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600295  
Ronnie G. Jung  
Executive Director  
Teacher Retirement System of Texas  
Effective date: February 9, 2006  
Proposal publication date: November 4, 2005  
For further information, please call: (512) 542-6438



## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

#### 34 TAC §§41.1, 41.2, 41.5 - 41.7, 41.10, 41.11

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") adopts amendments to the following rules concerning the health benefits program under the Texas Public School Retired Employees Group Benefits Act ("TRS-Care"): §41.1, relating to initial enrollment periods for TRS-Care; §41.2, relating to additional enrollment opportunities; §41.5, relating to payment of contributions; §41.6, relating to required contributions from public schools; §41.7, relating to effective dates of coverage; §41.10, relating to eligibility to enroll in TRS-Care; and §41.11, relating to years of service credit used to determine premiums for TRS-Care. Most of the adopted amendments reflect changes arising from the enactment of Senate Bill ("SB") 1691 (Act of May 27, 2005, 79th Legislature, Regular Session, Chapter 1359). The amended rules are adopted without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7197).

The substantive amendments to §§41.1, 41.7, and 41.10 result from changes SB 1691 made to eligibility requirements for TRS-Care in Insurance Code, §1575.004. To meet the definition of a "retiree" under TRS-Care, SB 1691 requires service retirees who retire on or after September 1, 2005 to have at least 10 years of service credit in TRS and either to meet the "Rule

of 80" (the sum of the retiree's age and years of service credit equals 80 or more) or to have 30 years of service credit at retirement. To satisfy the requirement to have at least 10 years of service credit in TRS, these retirees may include up to five years of military service credit but not any other service credit purchased as equivalent or special service credit. All TRS service credit, however, would count toward the Rule of 80 and the 30-year service credit requirements. Conforming the rule to the changes made in statute, adopted amendments to §41.1 delete the provision granting a second initial enrollment period to certain retirees who took a service retirement after September 1, 2004. Amended §41.7 also deletes language related to the "second initial enrollment period," which, as indicated above, is deleted in amended §41.1, and replaces it language addressing the effective date of coverage for individuals allowed to enroll or upgrade their plan tier in TRS-Care during the period from September 1, 2005 through October 31, 2005, as authorized by Board resolution adopted July 8, 2005. The adopted amendments to §41.10 reflect the changes SB 1691 made to the TRS-Care definition of a "retiree." Along with the amendments to §41.2, non-substantive changes to §§41.1, 41.7, and 41.10 now more accurately refer to the TRS-Care program.

Adopted amendments to §41.5 establish the consequences for a retiree's failure to pay a premium for optional TRS-care coverage following notice of delinquency and opportunity to make payment. The adopted amendments do the following: permit rather than require TRS to deduct premium payments from a retiree's annuity; downgrade a surviving spouse to free basic coverage upon default, in lieu of being completely canceled from participation in any level of TRS-Care; advise a retiree or surviving spouse of the limited opportunities to restore higher coverage levels after being downgraded for failure to pay a premium; and delete unnecessary language regarding disability retirees. In addition, the adopted amendments to §41.5 make non-substantive changes in reorganizing the subsections of the rule.

The adopted amendment to §41.6 reflects the increase the most recent general appropriations act (Act of May 29, 2005, 79th Legislature, Regular Session, Senate Bill 1, Chapter 1369) makes

in the public school contribution rate to the TRS-Care fund, from 0.40% to 0.55% of each active employee's salary.

Amended §41.11 implements the provision in SB 1691 removing limitations on the types of service credit that can be used in determining a retiree's TRS-Care premium.

TRS received no public comments regarding the proposed amendments to §§41.1, 41.2, 41.5 - 41.7, 41.10, or 41.11.

Statutory Authority: Insurance Code, §1575.052, which authorizes the Board to adopt rules it considers necessary to implement and administer TRS-Care and associated fund.

Cross-reference to Statute: For the adopted amendments to §§41.1, 41.2, 41.5, 41.7, 41.10, and 41.11: Insurance Code, Chapter 1575, which provides for the establishment and administration of the TRS-Care program and fund, and §38 of SB 1691, which amends Insurance Code, §1575.004 relating to definition of retiree. For the adopted amendments to §41.6: Insurance Code, Chapter 1575, and §42 of SB 1691, which amends Insurance Code, §1575.204, relating to public school contributions to the TRS-Care fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2006.

TRD-200600296

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: February 9, 2006

Proposal publication date: November 4, 2005

For further information, please call: (512) 542-6438



# REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Agency Rule Review Plan

Texas State Soil and Water Conservation Board

### Title 31, Part 17

TRD-200600354

Filed: January 23, 2006



## Proposed Rule Reviews

Finance Commission of Texas

### Title 7, Part 1

The Finance Commission of Texas files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter Q (§§1.1201 - 1.1207, 1.1211 - 1.1212, 1.1214 - 1.1217, 1.1221 - 1.1222, 1.1224 - 1.1227, 1.1231 - 1.1232, 1.1234 - 1.1237, 1.1241 - 1.1242, 1.1244 - 1.1247, and 1.1251 - 1.1256), relating to Chapter 342, Plain Language Contract Provisions, and Subchapter S (§§1.1401 - 1.1410), relating to Motor Vehicle Sales Finance Licenses. This rule review will be conducted pursuant to §2001.039, Texas Government Code. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these subchapters continue to exist. Final consideration of the rules being reviewed under this notice is scheduled for the commission's meeting on April 28, 2006.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in these subchapters continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200600285

Leslie L. Pettijohn  
Commissioner

Finance Commission of Texas  
Filed: January 19, 2006



Texas State Soil and Water Conservation Board

### Title 31, Part 17

The Texas State Soil and Water Conservation Board (Agency) files this notice of intent to review Title 31, Part 17, Chapter 517, Subchapter A, §§517.1 - 517.12, Financial Assistance, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The Agency finds that the reason for adopting the rule continues to exist.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rule continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P. O. Box 658, Temple, Texas 76503, by E-mail to [risom@tss-wcb.state.tx.us](mailto:risom@tss-wcb.state.tx.us), or by facsimile at (254) 773-3311.

TRD-200600355

Mel Davis  
Special Projects Coordinator  
Texas State Soil and Water Conservation Board  
Filed: January 23, 2006



The Texas State Soil and Water Conservation Board (Agency) files this notice of intent to review Title 31, Part 17, Chapter 519, Subchapter A, §§519.1 - 519.12, Technical Assistance Program, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The Agency finds that the reason for adopting the rule continues to exist.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rule continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P. O. Box 658, Temple, Texas 76503, by E-mail to [risom@tss-wcb.state.tx.us](mailto:risom@tss-wcb.state.tx.us), or by facsimile at (254) 773-3311.

TRD-200600359

Mel Davis  
Special Projects Coordinator  
State Soil and Water Conservation Board  
Filed: January 23, 2006



The Texas State Soil and Water Conservation Board (Agency) files this notice of intent to review Title 31, Part 17, Chapter 521, Subchapter A, §§521.1 - 521.13, Technical Assistance Program For Soil And Water Conservation Land Improvement Measures, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The Agency finds that the reason for adopting the rule continues to exist.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rule continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P. O. Box 658, Temple, Texas 76503, by E-mail to risom@tss-wcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-200600360

Mel Davis

Special Projects Director

Texas State Soil and Water Conservation Board

Filed: January 23, 2006



Texas Water Development Board

#### **Title 31, Part 10**

The Texas Water Development Board (Board) files this notice of intent to review 31 Texas Administrative Code (TAC), Part 10, Chapter 355, Research and Planning Fund, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist. The Board concurrently proposes amendments to §§355.70, 355.91, 355.93, 355.97 and 355.100 to correct rule citations and the name of the Texas Commission on Environmental Quality.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 355 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Ron Pigott, Attorney, Texas Water Development Board, P. O. Box 13231, Austin, Texas 78711-3231, by e-mail to ron.pigott@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200600332

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: January 20, 2006



The Texas Water Development Board (Board) files this notice of intent to review 31 Texas Administrative Code (TAC), Part 10, Chapter 357, Regional Water Planning Guidelines, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist. The Board concurrently proposes amendments to §§357.3 - 357.5, and §§357.7, 357.12, and 357.15 to conform the rules to House Bill 1763, 79th Legislature, Regular Session (2005), House Bill 1378, 78th Legislature, Regular Session (2003), and to correct the name of the Texas Commission on Environmental Quality.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 357 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Ron Pigott, Attorney, Texas Water Development Board, P. O. Box 13231, Austin, Texas 78711-3231, by e-mail to ron.pigott@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200600333

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: January 20, 2006



The Texas Water Development Board (Board) files this notice of intent to review 31 Texas Administrative Code (TAC), Part 10, Chapter 358, State Water Planning Guidelines, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 358 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Ron Pigott, Attorney, Texas Water Development Board, P. O. Box 13231, Austin, Texas 78711-3231, by e-mail to ron.pigott@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200600334

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: January 20, 2006



### **Adopted Rule Reviews**

Texas Water Development Board

#### **Title 31, Part 10**

Pursuant to the notice of proposed rule review published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7895), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 10, Chapter 377, Hydrographic Survey Program, in accordance with Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections since they govern the board's program of technical assistance for hydrographic surveys established by Texas Water Code, Chapter 15, Subchapter M. This completes the board's review of 31 TAC Chapter 377, Hydrographic Survey Program.

TRD-200600335



Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Filed: January 20, 2006

Pursuant to the notice of proposed rule review published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7895), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 10, Chapter 382, Water Infrastructure Fund, in accordance with Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections to continue to provide financial assistance to rural areas so that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions can be met. As a result of the review, the board adopts amendments to §§382.1, 382.3, and 382.22. This completes the board's review of 31 TAC Chapter 382, Water Infrastructure Fund.

TRD-200600336  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Filed: January 20, 2006

Pursuant to the notice of proposed rule review published in the November 25, 2005 issue of the *Texas Register* (30 TexReg 7895), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC Chapter 384, Part 10, Rural Water Assistance Fund, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections to continue to provide financial assistance to rural areas so that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions can be met. As a result of the review, the board adopts amendments to §384.1 and §384.22. This completes the board's review of 31 TAC Chapter 384, Rural Water Assistance Fund.

TRD-200600337  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Filed: January 20, 2006

# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §519.9(a)

No.	Violation	Citation	Administrative Penalty Range
1	Failure to follow Generally Accepted Auditing Standards; Yellow Book Auditing Standards; AICPA Auditing Standards; and other auditing standards.	22 TEX. ADMIN. CODE §§501.60 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
2	Failure to follow Generally Accepted Accounting Principles	22 TEX. ADMIN. CODE §§501.53, 501.61 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
3	Failure to follow other Professional Standards  (e.g. Compilation Standards)	22 TEX. ADMIN. CODE §§501.62 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
4	Lack of independence	22 TEX. ADMIN. CODE §§501.70 & 501.73  TEX. OCC. CODE §§901.458, 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

5	Violation of rules regarding receipt of commissions and other compensation	22 TEX. ADMIN. CODE §501.71;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
6	Violation of rules regarding contingency fees	22 TEX. ADMIN. CODE §501.72;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
7	Lack of integrity and objectivity	22 TEX. ADMIN. CODE §501.73;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

8	Incompetence	22 TEX. ADMIN. CODE §501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
9	Breach of confidential communications	22 TEX. ADMIN. CODE §501.75;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
10	Failure to return client records or client's portion of work papers	22 TEX. ADMIN. CODE §501.76;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
11	Acting through others	22 TEX. ADMIN. CODE §501.77 (AND THE RULE VIOLATED BY THE ACTOR);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

12	Practicing without a license	22 TEX. ADMIN. CODE §501.80;  TEX. OCC. CODE §§901.401, 901.453, 901.456, 901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
13	Practicing through an unregistered entity	22 TEX. ADMIN. CODE §501.81;  TEX. OCC. CODE §§901.401, 901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
14	False, fraudulent, misleading, or deceptive advertising	22 TEX. ADMIN. CODE §501.82;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$1,000 per violation.  <b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.
15	Improper firm name	22 TEX. ADMIN. CODE §501.83;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
16	Improper form of practice	22 TEX. ADMIN. CODE §501.84;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.

17	<p>Performing discreditable acts</p> <p>(1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting</p>	<p>22 TEX. ADMIN. CODE §501.90(1);</p> <p>TEX. OCC. CODE §§901.502(1), 901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
18	<p>Performing discreditable acts</p> <p>(2) dishonesty, fraud or gross negligence in the practice of public accountancy</p>	<p>22 TEX. ADMIN. CODE §501.90(2);</p> <p>TEX. OCC. CODE §§901.502(2), 901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
19	<p>Performing discreditable acts</p> <p>(3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board</p>	<p>22 TEX. ADMIN. CODE §501.90(3);</p> <p>TEX. OCC. CODE §§901.502(5), 901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
20	<p>Performing discreditable acts</p> <p>(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States</p>	<p>22 TEX. ADMIN. CODE §501.90(4);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(10), &amp; 901.502(11)</p> <p>TEX. OCC. CODE CHAP. 53</p>	<p>\$0 to \$100,000 per violation.</p>

21	<p>Performing discreditable acts</p> <p>(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States; moral turpitude; abuse of alcohol or controlled substances; or physical injury or threats of physical injury to a person</p>	<p>22 TEX. ADMIN. CODE §501.90(5);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(10), &amp; 901.502(11)</p>	\$0 to \$100,000 per violation.
22	<p>Performing discreditable acts</p> <p>(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state</p>	<p>22 TEX. ADMIN. CODE §501.90(6);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), &amp; 901.502(11)</p>	\$0 to \$100,000 per violation.
23	<p>Performing discreditable acts</p> <p>(7) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action</p>	<p>22 TEX. ADMIN. CODE §501.90(7);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>



24	Performing discreditable acts  (8) knowingly participating in the preparation of a false or misleading financial statement or tax return	22 TEX. ADMIN. CODE §501.90(8);  TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
25	Performing discreditable acts  (9) fiscal dishonesty or breach of fiduciary responsibility of any type	22 TEX. ADMIN. CODE §501.90(9);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
26	Performing discreditable acts  (10) failure to comply with a final order of any state or federal court	22 TEX. ADMIN. CODE §501.90(10);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
27	Performing discreditable acts  (11) repeated failure to respond to a client's inquiry within a reasonable time without good cause	22 TEX. ADMIN. CODE §501.90(11);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

28	Performing discreditable acts  (12) misrepresenting facts or making a misleading or deceitful statement to a client	22 TEX. ADMIN. CODE §501.90(12);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
29	Performing discreditable acts  (13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing authority	22 TEX. ADMIN. CODE §501.90(13);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
30	Performing discreditable acts  (14) threats of bodily harm or retribution to a client	22 TEX. ADMIN. CODE §501.90(14);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
31	Performing discreditable acts  (15) public allegations of a lack of mental capacity of a client which cannot be supported in fact	22 TEX. ADMIN. CODE §501.90(15);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

32	<p>Performing discreditable acts</p> <p>(16) causing a breach in the security of the CPA examination</p>	<p>22 TEX. ADMIN. CODE §501.90(16);</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
33	<p>Performing discreditable acts</p> <p>(17) voluntarily disclosing information communicated to the certificate holder by an employer, past or present, or through the certificate holder's employment in connection with accounting services rendered to the employer, except:</p> <p>(A) by permission of the employer;</p> <p>(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");</p> <p>(C) pursuant to a subpoena or other compulsory process in a court proceeding;</p> <p>(D) in an investigation or proceeding by the board under the Public Accountancy Act; or</p> <p>(E) in an ethical investigation conducted by a professional organization of certified public accountants</p>	<p>22 TEX. ADMIN. CODE §501.90(17);</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>

34	Performing discreditable acts  (18) breaching the terms of an agreed consent order entered by the Board or violating any Board Order	22 TEX. ADMIN. CODE §501.90(18);  TEX. OCC. CODE §§901.502(6), 901.502(11) & 901.502(12)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
35	Failure to report reportable events	22 TEX. ADMIN. CODE §501.91  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
36	Filing a frivolous complaint	22 TEX. ADMIN. CODE §501.92  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
37	Failure to respond to Board communications	22 TEX. ADMIN. CODE §501.93  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$1,000 per violation.  <b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.

38	Failure to comply with mandatory CPE	22 TEX. ADMIN. CODE §§501.94 & 523.62  TEX. OCC. CODE §§901.502(6), 901.502(11) & 901.502(12)	\$0 to \$10,000 per violation.
39	Three year no-pay individual	TEX. OCC. CODE §§901.502(4) & 901.502(11)	\$0 to \$10,000 per violation.
40	CPA exam irregularities	22 TEX. ADMIN. CODE §511.70  TEX. OCC. CODE §§901.502(11) & 901.502(12)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
41	Ineligible applicant certification hearings	22 TEX. ADMIN. CODE §§511.161 & 511.176  TEX. OCC. CODE §§901.502(11) & 901.502(12)	\$0 to \$10,000 per violation.

42	Moral character	<p>22 TEX. ADMIN. CODE §§511.27 &amp; 525.1</p> <p>TEX. OCC. CODE §§901.502(11) &amp; 901.502(12)</p>	<p><b>Moderate:</b> \$1,000 to \$50,000 per violation.</p> <p><b>Major:</b> \$50,000 to \$100,000 per violation.</p>
43	Failure to satisfy peer review requirements	<p>22 TEX. ADMIN. CODE §527.4</p> <p>TEX. OCC. CODE §§901.502(11) &amp; 901.502(12)</p>	<p><b>Minor:</b> \$0 to \$1,000 per violation.</p> <p><b>Moderate:</b> \$1,000 to \$50,000 per violation.</p> <p><b>Major:</b> \$50,000 to \$100,000 per violation.</p>

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

Request for Proposals: Enology and Viticulture Research and Education Grant Program

**Statement of Purpose of Grant.** In accordance with Texas Agriculture Code, Chapter 50B and Texas Alcoholic Beverage Code, Section 205.03, enacted by Senate Bill 1370, Senate Bill 1137 and House Bill 1, Article IX, Sec. 14.49, 79th Legislature, Regular Session, 2005, the Texas Department of Agriculture (TDA) seeks to fund grant proposals for enology and viticulture research and education. The project amounts that are specified herein by funding area, provide funding in the amount of up to \$613,000 per year for state fiscal years 2006 and 2007.

**Eligibility.** The grant funds may be awarded to public or private entities, including institutions of higher education and governmental research entities. Joint efforts between eligible entities will be considered, and a project proposal may include a request for funding of a project to be conducted by more than one entity.

### Objectives and Criteria.

1. The proposals must reflect the following objective:

Projects funded must be dedicated to education and/or conducting research in the areas of enology and viticulture to support the continued growth of the grape and wine industry.

2. Criteria that will be used in evaluating the proposal include:

- a. the extent to which the proposal benefits and supports the growth of the wine grape and wine industry;
- b. the extent to which the proposal contributes to a coordinated effort to address issues faced by the wine grape and wine industry, including the need for more educational and research opportunities in enology and viticulture, and increases the economic impact of the wine industry;
- c. the ability of the applicant institution to sustain an enology and/or viticulture program; and
- d. detail and reasonableness of project budget submitted, including justification for proposed line item expenditures.

### Funding Areas.

TDA and the Wine Industry Development Advisory Committee have jointly identified the following project areas and applicable maximum funding amounts for submission of proposals. A separate proposal must be submitted for each project, however, joint project proposals will be considered.

#### 1. Education.

##### a. Viticulture Outreach.

Funding amount per fiscal year: up to \$235,000

For funding of regionally-based viticulture education personnel and operations to work closely with vineyards and prospective grape growers to implement on-farm research projects, contribute to the development of best management practice recommendations, plan and deliver field

days, participate in educational seminars, and assist with courses offered through the viticulture and enology certificate program.

##### b. Enology Outreach.

Funding amount per fiscal year: up to \$20,000

For funding of an Enology Program Specialist to work with wineries to implement applied research and demonstration projects. The Specialist will also contribute to the development of best management practice recommendations, participate in educational seminars, and assist with courses offered through the viticulture and enology certificate program.

##### c. Viticulture and Enology Outreach Media Development.

Funding amount per fiscal year: up to \$25,000

For funding of an entity to work collaboratively with viticulture and enology researchers to disseminate research and enhance the adoption of recommended practices including those that are the result of the projects funded under this Request for Proposals (RFP). Dissemination of the project findings/results should be by the internet, other electronic media, and in print.

##### d. Viticulture & Enology Certificate Program.

Funding amount per fiscal year: up to \$45,000

Funding for the development and delivery/implementation of a viticulture and enology certificate program to provide professional-level training for new producers and continuing education for experienced producers.

#### 2. Research.

##### a. Viticulture Research.

Funding amount per fiscal year: up to \$118,000

Funding for a viticulture research program to intensively study grapevine physiology, evaluate grape varieties and rootstock, and identify best management practices.

##### b. Enology Research.

Funding amount per fiscal year: up to \$170,000

Funding for enology research programs, including the establishment of fruit processing and laboratory facilities for the production of experimental wines, wine sensory evaluation and chemical analysis.

### Proposal Limitations.

Proposals may not exceed 2 years. Second year funding will be contingent upon the availability of funds and the review of accomplishments with first year funding. If funding becomes unavailable during the project term and TDA is unable to obtain sufficient funds, the project amount may be reduced or terminated.

### Proposal/Funding Revisions.

TDA reserves the right to fund proposals partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

**Eligible Expenses.** Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

1. Travel - domestic only;
2. Equipment - nonexpendable, tangible personal property that has a useful life of more than one year and costs \$5,000 or more;
3. Supplies and direct operating expenses - equipment that costs less than \$5,000, research and office supplies, postage, telecommunications, printing, etc.; and
4. Indirect costs - no more than 10%.

**Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information. <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.

The following are some examples of these ineligible expenses:

1. Alcoholic beverages;
2. Entertainment;
3. Contributions - charitable or political;
4. Expenses falling outside of the project grant agreement period;
5. Expenditures not specifically listed in the project budget; and
6. Expenses that are not adequately documented.

**Submission Requirements.** Each proposal may not exceed fifteen (15) pages and must include the following information:

1. A cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the principal researchers. Indicate who is designated as the lead point of contact;
2. A proposal summary, not exceed to exceed one page. Include a statement about how the proposal benefits the wine grape and wine industry;
3. Identification of the key personnel to be funded and/or involved in operations funded. Include information on their experience, such as a brief professional biography and statement academic background and how these relate to the project, or part of the project, with which that key personnel will be associated ;
4. Performance objectives;
5. A work plan;
6. A detailed description of the anticipated beneficial impact on the wine and grape industry; and
7. A detailed project budget outlining anticipated expenses including but not limited to: travel, supplies, and equipment costs along with justification for proposed line item expenditures.

**Reporting Requirements.** Operations approved for funding are required to submit the following reports:

1. Project reports on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the award document;
2. A final compliance project report due either upon completion of the project or thirty (30) days after the termination of the contract. The final report shall be submitted in a hard copy format and an electronic format utilizing Word. The final report shall contain:

a. A project summary -history of the project, its objectives, importance, effort, results, and commercial applications of the project;

b. A description of the successes, challenges, and any limitations of the program;

c. Technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discussion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and

d. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts; and

3. Budget reports on a quarterly basis for the time periods specified in the award document that details the grant award spent to date; and

4. A final budget report due forty-five (45) days after the completion of the project or the termination of the project grant agreement.

#### **General Compliance Information.**

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any information or documentation submitted to TDA as part of the project grant agreement is subject to disclosure under the Texas Public Information Act.

3. Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

4. Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project agreement.

5. In any year in which a financial audit is conducted, a copy must be submitted to TDA, including the audit transmittal letter, management letter, and any schedules in which the grantee's funds are included.

6. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees will be provided a copy or it may be downloaded from <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.

**Deadline and Submission Information.** Proposals should be submitted to Brian Murray, Special Assistant for Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

**Proposals must be received no later than 5:00 p.m. on March 3, 2006.** One original and seven (7) copies must be submitted. Fax copies will not be accepted.

Please contact Brian Murray at (512) 463-7553 or by email at [brian.murray@agr.state.tx.us](mailto:brian.murray@agr.state.tx.us) with any questions you may have.

**Evaluation and Award Information.** All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.



**Texas Public Information Act.** All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200600408

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: January 25, 2006



## Office of the Attorney General

### Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Lakeview Developers, Inc.*, Cause No. GV103641; in the 353rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant was the owner and operator of a public water system serving residents in Ellis County, Texas. Defendant entered an Agreed Order with the TCEQ, in which the Defendant agreed to operate the system in compliance with all applicable rules and statutes. Later investigations of the Defendant's water system revealed that the Defendant had not complied with the rules and statutes and continued to operate the water system in violation of TCEQ rules. The lawsuit was brought to enforce the Agreed Order, and assess civil penalties against the Defendant. Since the inception of the lawsuit, the Defendant has sold the water system and the TCEQ has approved the sale and transfer of the system to another utilities management firm. The Defendant has agreed to this judgment.

Proposed Agreed Judgment: The Agreed Final Judgment assesses civil penalties against the Defendant. Defendant has agreed to pay Plaintiff a civil penalty in the amount of \$20,000.00, as well as \$7,800.00 in attorney's fees, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.*

TRD-200600407  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: January 25, 2006



## Texas Building and Procurement Commission

### Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services, announces the issuance of **Request for Proposals (RFP) #303-6-10143A**. TBPC seeks a ten (10) year lease of approximately 6,979 square feet of office space in Kaufman, Kaufman County, Texas.

The deadline for questions is February 7, 2006; and the deadline for proposals is February 14, 2006 at 3:00 P.M. The award date is March 6, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the **Electronic State Business Daily** at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=62864](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=62864).

TRD-200600402

Ingrid K. Hansen  
General Counsel  
Texas Building and Procurement Commission  
Filed: January 25, 2006



## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 13, 2005, through January 19, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 25, 2006. The public comment period for these projects will close at 5:00 p.m. on February 24, 2006.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Port Arthur LNG, LP; Port Arthur Pipeline, LP;** Location: The project site is located in waters of the United States, including wetlands, in Orange and Jefferson Counties, Texas, and Cameron, Calcasieu, and Beauregard Parishes, Louisiana. Specifically, the terminal facility is located in and along the Port Arthur Canal, on the west side of Sabine Lake, south of Port Arthur, in Jefferson County, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 407633; Northing: 3295911. A 36-inch, 70-mile-long pipeline will begin at the terminal facility and will terminate at an existing tie-in located in Beauregard Parish, Louisiana. Approximate UTM Coordinates: Zone 15; Easting: 478116; Northing: 3366776. Another 36-inch pipeline will extend from the terminal to an existing pipeline three miles to the south. Approximate UTM Coordinates: Zone 15; Easting: 409402; Northing: 3292264. Project Description: This notice reflects a proposed mitigation plan that is intended to compensate for impacts associated with the Port Arthur Liquefied Natural Gas

(LNG) project that was originally coordinated via public notice on 12 September 2005. Construction of the proposed LNG terminal facility will permanently impact 82.5 acres of wetlands, including 25 acres of emergent wetland habitat, 50.1 acres of tallow-dominated forested wetlands, 6.5 acres of forested scrub-shrub wetlands, and 0.9 acre of non-forested scrub-shrub wetland habitat. In addition, use of an existing dredge material placement area (see original public notice) for disposal for dredging the facility's basin and turn-around will result in impacts to approximately 589 acres of palustrine emergent wetland habitat. Additional work associated with re-routing an existing highway will affect 8.8 acres of tallow infested forested wetlands and 36.4 acres of non-forested wetlands. Of this acreage, 16.5 acres of wetlands will be permanently impacted. The remaining acreage will be allowed to revegetate naturally. A 140-foot-wide relocated pipeline corridor will affect an additional 10.3 acres of low quality forested wetlands and 42.4 acres of non-forested wetland habitat. As a result of the pipeline relocation, 10.3 acres of currently forested wetland habitat will be permanently converted to emergent marsh habitat. The remaining acreage will be allowed to revegetate naturally. A 3-mile-long, 36-inch-diameter natural gas pipeline will originate within the proposed LNG terminal facility and proceed to the south crossing of Keith Lake to a tie-in point with an existing pipeline. Construction of the 3-mile natural gas pipeline (temporary construction right-of-way and temporary workspaces) from the terminal to the tie-in will result in temporary impacts to 28.7 acres of wetlands, including 6 acres of tidally influenced emergent wetlands, 11.3 acres of non-tidal emergent wetlands, 3.6 acres of scrub-shrub wetlands, and 7.8 acres of tallow-infested forested wetlands. A separate 70-mile-long pipeline will impact a total of 279.8 acres of wetlands. Of this, 24.7 acres are forested wetlands, 164.8 acres are tidally influenced estuarine wetlands, 54 acres are fresh water emergent wetlands, and 36.1 acres are scrub-shrub wetlands. CCC Project No.: 06-0138-F1; Type of Application: U.S.A.C.E. permit application #23734Rev is being evaluated under §10 of the Rivers and Harbors Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: Michael Moore;** Location: The project is located at along Lots A, B and C, and Lot 1, Block 104, in the Modern Venice Subdivision between Rhode Island Avenue and North Shore Drive in Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 677850; Northing: 2885250. Project Description: The applicant proposes to construct a bulkhead, conduct mechanical dredging, and build 17 boat slips in an existing residential canal. The proposed bulkhead would be constructed of either concrete or vinyl and would have a total length of 428 feet. The proposed dredging would extend along 331 feet of canal shoreline to restore a depth of -5 feet mean high tide and would result in the removal of 1,720 cubic yards of material. Dredged material would be used to backfill the area behind the proposed bulkhead, which would be installed prior to dredging operations. The boat slips would be built in the dredged area. Ten slips would be oriented perpendicular to the bulkhead and would measure 7.7 feet wide by 20 feet long and would be separated by ten 2-foot-wide by 20-foot-long walkways. Four slips adjacent to the northeast side of these slips would be oriented parallel to the bulkhead and would measure 12 feet wide by 34 feet long. These slips would be separated by four 2- by 12-foot walkways. An additional three slips would be constructed northeast of these slips in an inset of the proposed bulkhead. Each slip would be 8.6 by 20 feet in size and would be separated by two 2- by 20-foot walkways. CCC Project No.: 06-0139-F1; Type of Application: U.S.A.C.E. permit application #24016 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Texas Parks and Wildlife Department;** Location: The project is located in State waters approximately 8 statute or 7 nautical miles from the Port Mansfield Jetties in the Gulf of Mexico, South Padre Island, Block 1047, offshore Willacy County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Mansfield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683753; Northing: 2935009. Project Description: The applicant proposes to construct an artificial reef in the Gulf of Mexico in South Padre Island, Block 1047. The artificial reef will be constructed of approved artificial reef materials per Texas Parks and Wildlife's Artificial Reef Plan. Reef materials may include using obsolete oil and gas production structures, obsolete or surplus vessels and other stable and durable land based materials. All floatable materials would be removed prior to placement. All tanks, compartments and enclosures would be permanently opened to provide water circulation and cleaned to EPA standards prior to placement. The approved materials would be placed within the confines of a designated 2,640- by 2,640-foot area. A minimum clearance of 50 feet, at mean low water, will be maintained above each structure. All activity associated with placement of artificial reef materials will be done in a manner so as not to interfere with current and future lease holders. CCC Project No.: 06-0142-F1; Type of Application: U.S.A.C.E. permit application #24052 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200600400

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: January 25, 2006

## Comptroller of Public Accounts

### Notice of Contract Award

Pursuant to Chapter 2254, Subchapter A and Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award in connection with the Request for Proposals (RFP #175b) to prepare Comptroller's data processing Statewide Cost Allocation Plan (SWCAP) and update.

Comptroller announces that the contract was awarded to Maximus, Inc., 2226 West Northern Avenue, Suite C207, Phoenix, Arizona 85021. The total amount of the contract is not to exceed \$36,460.00 per annum. The total aggregate amount of this contract for all four years shall not exceed \$145,840.00. The term of the contract is January 19, 2006 through August 31, 2009.

The notice of request for proposals (RFP #175b) was published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7272).

TRD-200600338

Pamela Smith  
Deputy General Counsel for Contracts  
Comptroller of Public Accounts  
Filed: January 20, 2006



### Notice of Request for Proposals

Pursuant to Chapters 403, 2155, and 2156, Sections 2155.001 and 2156.121, Texas Government Code and Chapter 2305, Section 2305.038, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #175g) from qualified, independent firms and institutions to provide Energy Education Outreach Services (Services). One or more successful respondents will assist Comptroller in conducting energy education outreach and related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about March 30, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, February 3, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Texas Marketplace on or after Friday, February 3, 2006, 10:00 a.m. (CZT).

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, February 17, 2006. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on February 23, 2006, or as soon thereafter as practical, on the Texas Marketplace at: <http://www.marketplace.state.tx.us>. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, March 3, 2006. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 3, 2006; Non-Mandatory Letters of Intent and Questions Due - February 17, 2006, 2 p.m. CZT; Official Questions and Responses posted - February 23, 2006 (or as soon thereafter as practical); Proposals Due - March 3, 2006, 2 p.m. CZT; Contract Execution - March 30,

2006, or as soon thereafter as practical; Commencement of Project Activities - March 30, 2006.

TRD-200600401  
William Clay Harris  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: January 25, 2006



### Office of Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of January 23, 2006 - January 29, 2006 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of January 23, 2006 - January 29, 2006 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of February 1, 2006 - February 28, 2006 is 7.25% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of February 1, 2006 - February 28, 2006 is 7.25% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200600274  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: January 18, 2006



#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of January 30, 2006 - February 5, 2006 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of January 30, 2006 - February 5, 2006 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200600366  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: January 23, 2006



### East Texas Council of Governments

## Request for Qualifications Soliciting Training for Staff and Policy Board Members

This Request for Qualifications (RFQ) to trainers/presenters is filed under the provisions of the Government Code, Chapter 2254.

Notice is given that the East Texas Council of Governments (ETCOG), as the administrative unit for the East Texas Workforce Development Board, is soliciting information, in the form of this RFQ, for the provision of training and keynote speaker services for staff, board members, youth professionals, and youth. We desire to receive information on the services you provide and available dates to provide them. It is our intent to produce a list of trainers and keynote speakers and the services they can provide for possible dates in the time period specified.

Interested parties should contact: Gary Allen, Section Chief, Planning/Board Support, East Texas Council of Governments, (903) 984-8641, Extension #227. If Mr. Allen is unavailable, you may speak with Sally Batchelor, Regional Planner II. Requests for the Request for Qualifications should be sent to: East Texas Council of Governments, 3800 Stone Road, Kilgore, TX 75662, Attention: Gary Allen, Fax: (903) 983-1440, e-mail: gary.allen@twc.state.tx.us.

The closing date for the receipt of responses to the RFQ is 5:00 p.m. Central Standard Time, February 21, 2006.

The ETCOG Executive Committee will be responsible for contract authorization.

TRD-200600357

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: January 23, 2006

## Texas Education Agency

### Request for Applications Concerning High Schools That Work (HSTW) Enhanced Design Network Grants

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-006 from eligible school districts or open-enrollment charter schools. An eligible school district or open-enrollment charter school shall include (1) a campus serving students in Grades 9-12 (A campus serving Grade 9 or Grades 9-10 may combine with a senior high school campus to submit one application on behalf of both campuses.); (2) a campus that is not a recipient of a Texas High School Redesign and Restructuring Grant, Cycle 1 or Cycle 2, a Comprehensive School Reform (CSR)--Texas High School Initiative grant, or a redesign grant from the Communities Foundation of Texas or the Bill and Melinda Gates Foundation; and (3) a campus either (a) within a district with a Stage 3 or Stage 4 intervention level for Career and Technology Education under the 2005-2006 TEA Performance-Based Monitoring System; or (b) with a rating of Academically Unacceptable in 2005 under the Texas Accountability Rating System; or (c) that participated as a member of the HSTW statewide network during the 2005-2006 school year.

A school district or open-enrollment charter school applying for this grant must be financially viable as determined through fiscal review by the TEA Division of Financial Audits. Additionally, to maintain eligibility for this grant, both the school district or open-enrollment charter school and the campus under the school district or open-enrollment charter school must be in compliance with all intervention requirements as established by the TEA Division of Program Monitoring and Interventions. An open-enrollment charter high school campus shall become ineligible for grant funding (or if a campus has applied for

and received funding for this grant, will have its grant funding placed on hold) if the commissioner of education notifies the campus' charter holder of the commissioner's intent to revoke or non-renew such charter under Texas Education Code (TEC), Chapter 12, or to close the campus under TEC, Chapter 39, for any of the reasons set forth in either statutory provision. If the commissioner of education ultimately revokes or denies renewal of an open-enrollment charter or closes a campus that has been awarded funds under this grant program, grant funding shall be discontinued.

**Description.** The purpose of the High Schools That Work (HSTW) Enhanced Design Network is to support under-performing high schools in the use of the HSTW school improvement design as a framework to improve academic and career/technology instruction and overall student achievement. The primary goal of this grant program is for high schools to implement the following HSTW key design principles: (1) a challenging curriculum for all high schools students, including four credits of math, four credits in a career/technology concentration, and four credits in an academic concentration, with at least one of those credits being Advanced Placement (AP), International Baccalaureate (IB), or dual credit; (2) schoolwide literacy goals across the curriculum; (3) intervention strategies for equipping under-prepared students for challenging high school work; (4) programs to reduce the failure rate at ninth grade; and (5) links to postsecondary. Applicants will be required to demonstrate how school district resources, including in-kind resources, will be dedicated toward the project; how the campus will utilize the HSTW school improvement consultants and incorporate identified professional development into their campus improvement plans; and how the program will be sustained using other funding sources, including federal, state, local, or private funds, beyond the life of the project period.

**HSTW Mentor High Schools Program.** Five high school campuses will be eligible to serve as mentor schools as part of the High Schools That Work (HSTW) Enhanced Design Network. The purpose of the HSTW Mentor High Schools program is to create a group of high schools that can provide resources and guidance, host site visits, and model best practices in the implementation of the HSTW key design principles. A list of high schools identified by the Southern Regional Education Board as high-implementers of the HSTW design will be included in the RFA, and those schools will be eligible to apply to be mentor high schools.

HSTW Mentor High Schools will be required to (1) disseminate online resources and other materials that will provide guidance and support in how to implement the HSTW design and how to sustain HSTW activities through other funding sources; (2) host site visits for HSTW Enhanced Design Network schools and other interested parties; and (3) provide guidance and coaching to HSTW Enhanced Design Network schools and other high schools through e-mail and telephone contact. Mentor schools may use grant funds under this program to pay for travel to HSTW state and national conferences.

**Dates of Project.** The High Schools That Work (HSTW) Enhanced Design Network Grants will be implemented primarily during the 2006-2007 school year. Applicants should plan for a starting date of no earlier than July 1, 2006, and an ending date of no later than February 29, 2008.

**Project Amount.** A total of approximately \$800,000 is available for funding High Schools That Work (HSTW) Enhanced Design Network Grants. Each high school campus will receive a maximum of \$30,000 to implement HSTW key design principles. Mentor schools will receive a maximum of an additional \$10,000 per school. This project is funded 100 percent from general revenue funds appropriated by Rider 59, General Appropriations Act, 2005.

**Selection Criteria.** Applications will be selected based on expert reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA, contain a comprehensive plan that will fundamentally change and improve the high school campus, and demonstrate an ability to sustain the changes after the grant period ends.

**Technical Assistance.** Through the Region 5 Education Service Center (ESC), the TEA will provide pre-grant support and guidance in the development of plans that address both campus needs and grant requirements. Through the Region 5 ESC, the TEA will also provide direct training, on-going regional training, and networking activities to those high school campuses that receive the High Schools That Work (HSTW) Enhanced Design Network Grants.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-06-006 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://www.tea.state.tx.us/opge/disc/index.html> for viewing and downloading.

**Further Information.** For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://www.tea.state.tx.us/opge/disc/index.html>.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, March 30, 2006, to be considered for funding.

TRD-200600409

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: January 25, 2006

## **Education Service Center Region 10**

### **Request for Applications**

Texas Support for Homeless Education Program (TEXSHEP), School Years 2006 - 2009

Filing Date. January 24, 2006.

**Filing Authority.** The availability of grant funds under Request for Applications RFA #ESCR-10/H2006-9 is authorized by the McKinney - Vento Homeless Education Assistance Improvements Act of 2001, Public Law 107-110.

**Eligible Applicants.** The Region 10 Education Service Center (ESC) is requesting applications from school districts or cooperatives of school districts, regional education service centers, and open enrollment charter schools to facilitate the enrollment, attendance, and school success of homeless children and youth.

**Description.** Applicants should describe plans to provide tutoring, counseling, social work services, transportation, and other assistance that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include data on the impact of the project on the enrollment, school attendance, and the academic success of homeless students.

**Dates of Project.** The Texas Support for Homeless Education Program grants will be implemented during the 2006 - 2007 school year. Applicants should plan for a starting date no earlier than September 1, 2006.

**Project Amount.** Approximately \$4 million will be provided for an unspecified number of projects; the number of projects will depend on the number of applicants. Project grant awards will range from \$25,000 to \$250,000 and are dependent upon the number of students and the poverty rates in the districts to be served. Project funding in the second and third years will be based on satisfactory progress of the first and second-year objectives and activities and on general budget approval by the State Board of Education, the Commissioner of Education, the Texas Legislature, and the availability of funding. This project is funded 100% from McKinney - Vento Homeless Education Assistance Act federal funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The Region 10 ESC reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

Region 10 ESC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit Region 10 ESC to pay any costs before an application is approved. The issuance of this RFA does not obligate Region 10 to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of the Request For Application ESCR-10/H2004 may be downloaded from the Texas Homeless Education Office website at <http://www.utdanacenter.org/theo>. The application may also be obtained by writing The University of Texas at Austin, Charles A. Dana Center, Texas Homeless Education Office, 2901 North IH-35, Suite 2.246, Austin, TX 78722-2348, or by calling 1-800-446-3142 or (512) 475-9702 (in Austin). Please refer to the RFA number in your request.

**Further Information.** For clarifying information about the RFA, contact the Texas Homeless Education Office at 1-800-446-3142 or (512) 475-9702.

**Bidder's Conference.** As previously advertised on the Texas Education Agency and Texas Homeless Education Office websites, Region 10 held a bidder's conference for those interested in additional information about this RFA on February 2, 2006 at the Texas Education Agency in Austin, Texas. This bidder's conference was videotaped. Bidders may request a DVD of the proceedings by calling Janie Phillips, Administrative Assistant, Texas Homeless Education Office, at 1-800-446-3142, or by sending an e-mail to Barbara James, Director, Texas Homeless Education Office, at [babawawa@mail.utexas.edu](mailto:babawawa@mail.utexas.edu). Questions regarding the bidder's conference or the TEXSHEP grant may be directed to

Barbara James at 1-800-446-3142 or (512) 475-8765, or by e-mail at babawawa@mail.utexas.edu.

Deadline for Receipt of Application. Applications must be received in the Region 10 ESC business office by 4:30 p.m. (Central Daylight Savings Time), Thursday, April 13, 2006, to be considered.

TRD-200600373

Jill Shugart

Executive Director

Education Service Center Region 10

Filed: January 24, 2006

## **Texas Commission on Environmental Quality**

### **Enforcement Orders**

An agreed order was entered regarding U.S. Department of The Navy, Naval Air Station Kingsville, Docket No. 2002-0222-PST-E on 01/12/2006 assessing \$3,096.16 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cameron County, Docket No. 2002-1339-MLM-E on 01/12/2006 assessing \$8,600 in administrative penalties with \$1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rayburn Country Municipal Utility District, Docket No. 2003-1296-MWD-E on 01/12/2006 assessing \$9,110 in administrative penalties with \$1,822 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Glen Rose, Docket No. 2003-0400-MWD-E on 01/12/2006 assessing \$14,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dayton Drive-Thru, Inc., Docket No. 2004-0235-PST-E on 01/12/2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Saint Jo, Docket No. 2004-0531-MWD-E on 01/12/2006 assessing \$12,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Haskell, Docket No. 2004-0544-MWD-E on 01/12/2006 assessing \$3,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cemex Inc., Docket No. 2004-1006-AIR-E on 01/12/2006 assessing \$123,608 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jan Pate dba B D J's, Docket No. 2004-1243-PST-E on 01/12/2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding eMag Solutions, LLC, Docket No. 2004-1626-AIR-E on 01/12/2006 assessing \$7,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alto Corner Market, Inc., Docket No. 2004-1662-PST-E on 01/12/2006 assessing \$4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stewart & Stevenson Tactical Vehicle Systems, LP, Docket No. 2004-1886-IHW-E on 01/12/2006 assessing \$94,489 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maurice Rosalez, Docket No. 2005-0003-LII-E on 01/12/2006 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ReedHycalog, L.P., Docket No. 2005-0004-IWD-E on 01/12/2006 assessing \$1,080 in administrative penalties with \$216 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConcoPhillips Company, Docket No. 2005-0163-AIR-E on 01/12/2006 assessing \$20,250 in administrative penalties with \$4,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2005-0290-AIR-E on 01/12/2006 assessing \$8,662 in administrative penalties with \$1,732 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Growers, L.P., Docket No. 2005-0316-IWD-E on 01/12/2006 assessing \$4,920 in administrative penalties with \$984 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel Ramirez, Jr. dba Country Village Market, Docket No. 2005-0376-PST-E on 01/12/2006 assessing \$1,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samuel Consulting, Inc., dba Circle Full Service Car Wash, Docket No. 2005-0392-PST-E on 01/12/2006 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Martindale, Docket No. 2005-0603-MWD-E on 01/12/2006 assessing \$8,800 in administrative penalties with \$1,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rogers, Docket No. 2005-0605-MWD-E on 01/12/2006 assessing \$6,200 in administrative penalties with \$1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regency Centers Corporation dba Time Mart 15, Docket No. 2005-0632-PST-E on 01/12/2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Safety-Kleen Systems, Inc., Docket No. 2005-0636-MWD-E on 01/12/2006 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANR Investments, Inc. dba ANR Grocery, Docket No. 2005-0671-PST-E on 01/12/2006 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2005-0676-AIR-E on 01/12/2006 assessing \$18,540 in administrative penalties with \$3,708 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2005-0739-MWD-E on 01/12/2006 assessing \$5,610 in administrative penalties with \$1,122 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhino Linings of South Texas, Inc., Docket No. 2005-0767-AIR-E on 01/12/2006 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaime J. Salinas, Docket No. 2005-0801-LII-E on 01/12/2006 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Astro Waste, Inc., Docket No. 2005-0803-MSW-E on 01/12/2006 assessing \$11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Olmito Water Supply Corporation, Docket No. 2005-0853-MWD-E on 01/12/2006 assessing \$8,800 in administrative penalties with \$1,760 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Molecular Limited Partnership, Docket No. 2005-0879-AIR-E on 01/12/2006 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Campbell Gas & Oil Company, Inc., Docket No. 2005-0967-IWD-E on 01/12/2006 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jung Oil, Inc., Docket No. 2005-1001-PST-E on 01/12/2006 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ABG Development, Ltd., Docket No. 2005-1021-EAQ-E on 01/12/2006 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmie Hahn Partnership, Ltd., Docket No. 2005-1164-IWD-E on 01/12/2006 assessing \$4,250 in administrative penalties with \$850 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allied Construction Supplies Corp., Docket No. 2005-1237-AIR-E on 01/12/2006 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Glass, Inc., Docket No. 2005-1283-PST-E on 01/12/2006 assessing \$15,500 in administrative penalties with \$3,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nisseki Chemical Texas Inc., Docket No. 2005-1308-AIR-E on 01/12/2006 assessing \$7,000 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melinda Lee dba Garrison Fina, Docket No. 2005-1322-PST-E on 01/12/2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Iola Independent School District, Docket No. 2005-1333-MWD-E on 01/12/2006 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lackland Mart Inc. dba Valley HI 66 1, Docket No. 2005-1362-PST-E on 01/12/2006 assessing \$3,400 in administrative penalties with \$680 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sanderson Farms, Inc. (Processing Division), Docket No. 2005-1385-IWD-E on 01/12/2006 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ozdo, Inc. dba Star Food Mart, Docket No. 2005-1390-PST-E on 01/12/2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Woodcraft Company, L.P., Docket No. 2005-1427-AIR-E on 01/12/2006 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Newfield Exploration Mid-Continent Inc., Docket No. 2005-1429-AIR-E on 01/12/2006 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Culebra Phillips Mart, Inc. dba Culebra Phillips 6, Docket No. 2005-1456-PST-E on 01/12/2006 assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding Texas Crude Energy, Inc., Docket No. 2005-1500-AIR-E on 01/12/2006 assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rescar, Inc., Docket No. 2005-1532-AIR-E on 01/12/2006 assessing \$2,025 in administrative penalties with \$405 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Trice dba Daves Corner Grocery, Docket No. 2005-1551-PST-E on 01/12/2006 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Manders, Docket No. 2005-1556-LII-E on 01/12/2006 assessing \$469 in administrative penalties with \$94 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alpine, Docket No. 2004-0944-PWS-E on 01/12/2006 assessing \$10,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Caroline Sweeney, Staff Attorney at (512) 239-0665, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edgewood, Docket No. 2004-1540-PWS-E on 01/12/2006 assessing \$3,675 in administrative penalties with \$735 deferred.

Information concerning any aspect of this order may be obtained by contacting Caroline Sweeney, Staff Attorney at (512) 239-0665, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack and Rhonda Vanover dba Casey Homes Estates Public Water Supply, Docket No. 2004-1984-PWS-E on 01/12/2006 assessing \$7,290 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Vernco Construction, Inc., Docket No. 2005-0080-WQ-E on 01/12/2006 assessing \$10,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Craig Turner, Docket No. 2005-0607-PWS-E on 01/12/2006 assessing \$7,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lexicon, Inc., Docket No. 2005-0637-WQ-E on 01/12/2006 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Iredell, Docket No. 2005-0763-PWS-E on 01/12/2006 assessing \$1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda King-Zrubek, Enforcement Coordinator at (512) 239-0824, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quality Concrete & Materials Co., Ltd., Docket No. 2005-1029-WQ-E on 01/12/2006 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AHS, Inc. dba Amigo Mart, Docket No. 2005-1036-PWS-E on 01/12/2006 assessing \$1,540 in administrative penalties with \$308 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hemphill, Docket No. 2005-1073-PWS-E on 01/12/2006 assessing \$1,290 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Quintana, Docket No. 2005-1100-PWS-E on 01/12/2006 assessing \$635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Colorado River Authority, Docket No. 2005-1196-PWS-E on 01/12/2006 assessing \$635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Rayburn Water, Inc., Docket No. 2005-1228-PWS-E on 01/12/2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Winnsboro, Docket No. 2005-1258-PWS-E on 01/12/2006 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Travis County MUD 10, Docket No. 2005-1260-PWS-E on 01/12/2006 assessing \$655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Loop 360 Water Supply Corporation, Docket No. 2005-1263-PWS-E on 01/12/2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia Inc., Docket No. 2005-1288-PWS-E on 01/12/2006 assessing \$325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Livingston Water Supply & Sewer Service Corporation, Docket No. 2005-1299-PWS-E on 01/12/2006 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Conference Association of Seventh-Day Adventists, Docket No. 2005-1420-PWS-E on 01/12/2006 assessing \$6,338 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Fuel Brokers, Inc., Docket No. 2004-0171-IHW-E on 01/18/2006 assessing \$27,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200600397

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2006



### Notice of Meeting on March 9, 2006, in Linden, Texas Concerning the Cass County Treating Company

The purpose of the meeting is to obtain public input and information concerning a proposal of the Cass County Treating Company to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under Texas Solid Waste Disposal Act, Health and Safety Code (the Act), Chapter 361, as amended, to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3278).

In accordance with the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. The commission hereby gives notice that the commission's executive director has determined the Cass County Treating Company site to be eligible for listing, and that the executive director proposes to list it on the state registry. The commission also gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The commission is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program rules in 30 TAC §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety, or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on February 1, 2006, in the *Cass County Sun*.

The facility proposed for listing is the Cass County Treating Company, located at 304 Hall Street, Linden, Cass County, Texas. The geographic coordinates of the site are Latitude 33 degrees 00 minutes 10 seconds North and Longitude 94 degrees 21 minutes 02 seconds West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

Cass County Treating Company is a 17.07-acre site within the southeastern city limits of Linden, in Cass County, Texas. The site is bordered by residential areas to the west and north, and undeveloped wooded areas to the south and east. CCTC began preserving wood with pentachlorophenol (PCP) in the 1960's but switched to chromate copper arsenate in 1984. Three backfilled surface impoundments used for the disposal of PCP-contaminated wastewater were identified on

site. Evidence of soil contamination was documented on site. PCP releases into a drainage ditch and spring water were documented in 1986. In 1987, evidence of phenolic organic contamination was documented in groundwater monitoring wells located downgradient to the surface impoundments.

In June of 1998, the TCEQ Superfund Site Discovery and Assessment Program completed a screening report for the CCTC site. During the 2004 site assessment, volatile, semi-volatile, and inorganic compounds were noted in groundwater. PCP was detected at 8,100 micrograms per liter in a groundwater well located downgradient to the surface impoundment. There are no drinking water intakes documented at the site. Naphthalene was detected in a sediment sample collected from a wetland along the intermittent tributary to Beach Creek.

A public meeting will be held on March 9, 2006, at 7:00 p.m., in Linden City Hall, Council Chambers, 104 South Main, Linden, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility that is the subject of this notice is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., March 9, 2006, by Sue Rogers, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on March 9, 2006.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Atlanta Public Library, 101 West Hiram, Atlanta, Texas 75551, (903) 796-2112. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the State Superfund Program on the TCEQ Web site located at [www.tceq.state.tx.us/remediation/superfund/index.html](http://www.tceq.state.tx.us/remediation/superfund/index.html). Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363.

TRD-200600383

Stephanie Bergeron Perdue  
Acting Deputy Director, Office of Legal Services  
Texas Commission on Environmental Quality  
Filed: January 24, 2006



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO

when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 6, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 6, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Environmental Management Services of Texas, Inc.; DOCKET NUMBER: 2005-0358-IHW-E; TCEQ ID NUMBERS: 85009 and RN100566256; LOCATION: 9717 Carnegie Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: used oil transfer facility; RULES VIOLATED: 30 TAC §324.1 and 40 Code of Federal Regulations §279.45(d), by failing to have a secondary containment system where used oil was stored for more than 24 hours, but not longer than 35 days; PENALTY: \$625; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: Epley Enterprises, Inc.; DOCKET NUMBER: 2005-0587-MLM-E; TCEQ ID NUMBERS: TXR05Q734 and RN102988698; LOCATION: 3916 South Chadbourne Street, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: drill bit manufacturing facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(2)(a), by failing to completely develop the pollution prevention team requirements of the permit; 30 TAC §281.25(b)(4) and Storm Water Permit Number TXR05Q734, Section (A)(3)(a), by failing to identify eligible non-storm water discharges; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(4)(a), by failing to develop a complete narrative description of all activities and potential pollution sources; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(4)(c)(1), (2), and (12), by failing to develop a complete site map; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(b)(1), by failing to specify all potential spill areas; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(b)(5), by failing to develop a record of adequate spill prevention and cleanup techniques; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(b)(7), by failing to develop and maintain an inventory of equipment and materials for spill clean-up; 30 TAC

§281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(c), by failing to develop best management practices; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(3)(b) and (c), by failing to perform and certify the investigation of non-storm water discharges; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(g), by failing to conduct quarterly inspections; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(h), by failing to conduct visual monitoring of storm water discharges; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(f), by failing to conduct an annual employee training and education program; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(7), by failing to conduct an annual comprehensive site compliance evaluation; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (D)(1), by failing to conduct annual numeric effluent limitation sampling for hazardous metals; 30 TAC §281.25(a)(4) and Storm Water Permit Number TXR05Q734, Section (A)(5)(a), by failing to implement and maintain good housekeeping procedures; and 30 TAC §335.4, by failing to manage wastes so as to prevent discharges to the environment; PENALTY: \$6,050; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Het & Harsh Corporation dba Sonic Quick Stop; DOCKET NUMBER: 2004-1824-PST-E; TCEQ ID NUMBERS: 40823 and RN101884286; LOCATION: 7502 Synott Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$3,750; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Landed I, Ltd. dba J.H. Walker Trucking; DOCKET NUMBER: 2005-0255-PST-E; TCEQ ID NUMBERS: 75632 and RN100713775; LOCATION: 11404 Hempstead Road, Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$2,100; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Lisanti Realty Corporation dba Lisanti Food Service; DOCKET NUMBER: 2005-0138-PST-E; TCEQ ID NUMBERS: 59456 and RN102047289; LOCATION: 9020 Sterling Street, Irving, Dallas County, Texas; TYPE OF FACILITY: food distributing company with an on-site petroleum storage tank; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$950; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Live Oak Golf Country Club Inc.; DOCKET NUMBER: 2005-0742-PWS-E; TCEQ ID NUMBERS: 0040031 and RN101263176; LOCATION: 318 Country Club Road, Rockport, Aransas County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), by failing to collect and submit routine bacteriological samples for August - October 2003 and February and July 2004; and 30 TAC §290.109(c)(2)(F), by failing to collect and submit at least five additional routine bacteriological samples in May 2004, following a total coliform-positive sample collected in April 2004; PENALTY: \$2,055; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Price Construction, Ltd.; DOCKET NUMBER: 2005-0491-AIR-E; TCEQ ID NUMBER: RN104523717; LOCATION: 2.2 miles north of Elm Creek on the east side of United States Highway 277, near Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to obtain authorization to construct and operate a hot mix asphalt plant before operation began; PENALTY: \$5,000; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(8) COMPANY: PT Gas Service Company, L.C. dba Workingmans Friend 529; DOCKET NUMBER: 2004-0506-PST-E; TCEQ ID NUMBERS: 003615 and RN102040359; LOCATION: 1508 Southwest Parkway, Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: convenience store with the retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to reconcile inventory control records on a monthly basis in a manner sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.74, by failing to investigate a suspected release from the USTs; and 30 TAC §334.72, by failing to notify the TCEQ within 24 hours of a suspected release; PENALTY: \$13,500; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Truman Loving; DOCKET NUMBER: 2004-1999-OSI-E; TCEQ ID NUMBER: RN104402797; LOCATION: 250 23rd Street, Woodville, Tyler County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §30.5(a) and (b) and §285.61(1), THSC, §366.071(a), and TWC, §37.003, by failing to obtain a license prior to completing the installation of an OSSF; 30 TAC §285.61(4) and THSC, §366.051(c), by failing to obtain proof of a permit or authorization prior to the construction of an OSSF; and 30 TAC §§285.61(6), 285.91(10), 285.32(a)(5), (b)(1)(B), (C)(ii), and (E), and 285.33(b)(1) and (c)(1)(B), and THSC, §366.004, by failing to meet the minimum criteria for installing an OSSF; PENALTY: \$750; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200600381

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: January 24, 2006

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## Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 6, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 6, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: A B C Concrete, Inc.; DOCKET NUMBER: 2005-1071-WQ-E; TCEQ ID NUMBER: RN102071826; LOCATION: 8000 Dee Gabriel Collins Road, Austin, Travis County, Texas; TYPE OF FACILITY: ready mix concrete plant; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and Permit Number TXG110225, by failing to implement a Storm Water Pollution Prevention Plan; and 30 TAC §334.128(a) and TWC, §5.702, by failing to pay outstanding aboveground storage tank fees; PENALTY: \$5,350; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: AVS Management Inc dba Toor Shell Food Mart; DOCKET NUMBER: 2005-1191-PST-E; TCEQ ID NUMBER: RN101890978; LOCATION: 9875 North Houston Rosslyn Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$1,050; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Bill Wilson dba Wilson's Sand Pit; DOCKET NUMBER: 2004-0960-AIR-E; TCEQ ID NUMBER: RN104261250; LOCATION: 1/2 mile south of the Highway 428 and Highway 377 intersection, Aubrey, Denton County, Texas; TYPE OF FACILITY:

rock crushing plant; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §116.110(a) and THSC, §382.0518(a), by failing to obtain a permit or satisfy the conditions of a permit by rule to construct a rock crusher; PENALTY: \$55,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Casey Shepelwich; DOCKET NUMBER: 2005-0802-LII-E; TCEQ ID NUMBER: RN103228946; LOCATION: 7209 Montego Drive, Rowlett; 2305 Cedarwood, Garland, Dallas County, Texas; TYPE OF FACILITY: lawn care service company; RULES VIOLATED: 30 TAC §30.5 and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system. Specifically, Mr. Shepelwich, who does not hold an irrigator license, sold an irrigation system for installation at 2305 Cedarwood, Garland, Dallas County, Texas; PENALTY: \$250; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Baird; DOCKET NUMBER: 2005-1043-PWS-E; TCEQ ID NUMBER: 0300001; LOCATION: Baird, Callahan County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: THSC, §341.0315(c) and 30 TAC §290.113(f)(4), by exceeding the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for trihalomethanes for the third and fourth quarters of 2004 and the first quarter of 2005; and THSC, §341.0315(c) and 30 TAC §290.113(f)(5), by exceeding the MCL of 0.060 mg/L for haloacetic acid (HAA5) for the third and fourth quarters of 2004 and the first quarter of 2005; PENALTY: \$1,250; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Hung Tran dba Corner Stop Food Mart; DOCKET NUMBER: 2005-0141-PST-E; TCEQ ID NUMBERS: 35272 and RN101446664; LOCATION: 409 South Brooks Street, Brazoria, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$1,365; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: KGA Corporation, Inc.; DOCKET NUMBER: 2003-1155-PST-E; TCEQ ID NUMBERS: 39222 and RN102220068; LOCATION: 2211 West Southwest Loop 323, Tyler, Smith County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(3), by failing to report to the commission a suspected release from a UST within 24 hours of its discovery; and 30 TAC §334.74, by failing to investigate and confirm suspected releases from the diesel storage tank within 30 days; PENALTY: \$7,500; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Lakewind Enterprises, Inc. dba Tidwell Conoco; DOCKET NUMBER: 2004-1638-PST-E; TCEQ ID NUMBERS: 68676 and RN102040862; LOCATION: 7292 West Tidwell Road,

Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$950; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Sarn Management, Inc. dba Toor Food Mart; DOCKET NUMBER: 2004-1328-PST-E; TCEQ ID NUMBERS: 39771 and RN101432466; LOCATION: 899 North Main Street, Liberty, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(ii)(II) and TWC, §26.3475(c)(1), by failing to monitor its USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,975; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: The City of Gustine; DOCKET NUMBER: 2002-1324-MWD-E; TCEQ ID NUMBER: 10841-001; LOCATION: two miles east of the intersection of State Highway 36 and Farm-to-Market Road 1476, Gustine, Comanche County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121, 30 TAC §305.125(1), and TPDES Permit Number 10841-001, Final Effluent Limitations and Monitoring Requirements, by failing to comply with permitted discharge limitations; PENALTY: \$16,150; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: W. Silver, Inc.; DOCKET NUMBER: 2004-0031-AIR-E; TCEQ ID NUMBERS: EE-0091-O and RN100930965; LOCATION: 9059 Doniphan Drive, Vinton, El Paso County, Texas; TYPE OF FACILITY: fabricated steel manufacturing facility; RULES VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(a), by allowing the transfer of gasoline which may ultimately be used in a motor vehicle in the El Paso area with a Reid vapor pressure greater than 7.0 pounds per square inch absolute; and 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum 2.7% by weight, oxygenated fuel requirement for motor vehicle fuel within El Paso County during the control period between October 1, 2004 and March 31, 2005; PENALTY: \$4,640; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(12) COMPANY: Weldon Alders dba Woodland Hills Water Company; dba Lakeview Water System; dba Fairfield Estates; DOCKET NUMBER: 2004-0480-PWS-E; TCEQ ID NUMBERS: 1460120, 1460098, 1460118, RN101177483, RN101458750, and RN101206795; LOCATION: Woodland Hills Facility: Woodland Hills Subdivision; Lakeview Water System: County Road 4532; Fairfield Estates: County Road 6022, Dayton, Liberty County, Texas; TYPE OF FACILITY: retail public utilities; RULES VIOLATED: Woodland Hills Facility: 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide the minimum total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps with a minimum total capacity of 2.0 gallons per minute (gpm) per connection, or total capacity of 1,000 gpm and the ability to meet peak hourly demand with the largest pump out of service, whichever is less, at

each pump station or pressure plane; Lakeview Facility: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide the minimum total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps with a minimum total capacity of 2.0 gpm per connection at each pump station or pressure plane; Fairfield Facility: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide the minimum total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps with a minimum total capacity of 2.0 gpm per connection at each pump station or pressure plane; PENALTY: \$22,050; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200600382

Stephanie Bergeron Perdue  
Acting Deputy Director, Office of Legal Services  
Texas Commission on Environmental Quality  
Filed: January 24, 2006

### ◆ ◆ ◆ Notice of Water Quality Applications

The following notices were issued during the period of January 10, 2006 through January 19, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ALGONQUIN WATER RESOURCES OF TEXAS has applied to for a renewal of TPDES Permit No. 12482-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 68,000 gallons per day. The facility is located approximately 7,600 feet south and 2,400 feet east of the intersection of Farm-to-Market Road 49 and Farm-to-Market Road 2869 and 9 miles north of the Town of Hawkins in Wood County, Texas.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF AUSTIN, to amend the Other Requirements Section, Item No. 3, Page 23. The standard reporting requirements for a new plant (30 TAC Sections 319.1-319.11) should be added to this item in the draft permit. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 0.75 mile south of State Highway 71 and approximately 8 miles east of the intersection of State Highway 71 and U. S. Highway 183 in Travis County, Texas.

CITY OF DETROIT has applied for a renewal of TPDES Permit No. 10724-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 108,000 gallons per day. The facility is located approximately 1,200 feet south of U.S. Highway 82, approximately one mile southeast of the intersection of U.S. Highway 82 and Farm-to-Market Road 2573 in Red River County, Texas.

DOWDELL PUBLIC UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0011404001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The facility is located

in the northwest quadrant of the intersection of Kuykendahl Road and Dowdell Road, approximately one mile east of Farm-to-Market Road 2920 and approximately seven miles west of Interstate Highway in Harris County, Texas.

CITY OF DRISCOLL has applied for a renewal of TPDES Permit No. 11541-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located northeast of Driscoll, approximately 2,400 feet northeast of the intersection of Farm-to-Market Road 665 and U.S. Highway 77, approximately 2,600 feet southeast of U.S. Highway 77 crossing Petronila Creek in Nueces County, Texas.

FOREST HILLS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11807-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located south of Frick Road, approximately 2.5 miles northwest of the intersection of West Mount Houston Road and Veterans Memorial Boulevard (formerly Stuebner-Airline Road) in Harris County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 25 has applied for a major amendment to TPDES Permit No. 12003-001 to authorize an increase in the discharge of treated domestic wastewater from daily average flow not to exceed 980,000 gallons per day to an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 400 feet north of Old Richmond Road (Richmond-Gains Road) and approximately 2,900 feet east of Farm-to-Market Road 1464 in Fort Bend County, Texas.

CITY OF HACKBERRY has applied for a major amendment to TPDES Permit No. 13434-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 130,000 gallons per day to a daily average flow not to exceed 710,000 gallons per day. The facility is located at the southern end of Maxwell Road in the City of Hackberry in Denton County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5 has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011824002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located 3,000 feet east and 1,300 feet south of the intersection of Telge Road and Grant Road in Harris County, Texas.

JETT WELD, INC. has applied for a renewal of Permit No. 12430-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 12118 Farm-to-Market Road 529 (Spencer Road), between Fairview Road and Wright Road, approximately 1.2 miles west of the intersection of U.S. Highway 290 and Farm-to-Market Road 529 in Harris County, Texas.

CITY OF LONGVIEW has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10589-004, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 1,008,000 gallons per day. The facility is located approximately one mile west of the intersection of Judson Road and Farm-to-Market Road 1844 in Gregg County, Texas.

POINT AQUARIUS MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. 11219-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 390,000 gallons per day to a daily average flow not to exceed 700,000 gallons per day. The facility is located

approximately 1 mile southwest of the intersection of Farm-to-Market Road 1097 and Aquarius Boulevard in Montgomery County, Texas.

CITY OF PYOTE has applied for a renewal of Permit No. 13986-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day via surface irrigation of 13.04 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located between U.S. Highway 80 (Business Interstate Route 20) and Interstate Highway 20, approximately 500 feet east of the interstate of Rogers Street (State Highway 115) and U.S. Highway 80 (Business Interstate Route 20) in Ward County, Texas.

RANCHO DEL LAGO, INC. has applied for a new permit, Proposed Permit No. WQ0014615001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via surface irrigation of 100 acres of public access landscape and a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities will be located approximately 3.9 miles southeast of the intersection of State Highway 281 and Farm-to-Market Road 32 in Blanco County, Texas. The disposal site will be located approximately 3.2 miles southeast of the intersection State Highway 281 and Farm-to-Market Road 32 in Blanco County, Texas.

CITY OF RENO has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 12162-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 522,000 gallons per day. The facility is located approximately 1 1/3 miles southwest of the intersection of Farm-to-Market Road 195 and Northwest Seventh Street in Lamar County, Texas.

REUNION 20 TRAVEL VILLAGE, LTD. has applied for a renewal of TPDES Permit No. 14152-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 56,000 gallons per day. The facility is located approximately 1,000 feet east northeast of the intersection of Interstate Highway 20 and U.S. Highway 271 in Smith County, Texas.

SABINE RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. 12134-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located at the southwest corner of the intersection of State Highway 62 and the Southern Pacific Railroad approximately 2.7 miles northeast of Orangefield in Orange County, Texas.

CITY OF SANTA ROSA has applied for a major amendment to TPDES Permit No. 10330-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 390,000 gallons per day in the interim phase to a daily average flow not to exceed 681,000 gallons per day in the final phase. The Applicant has also applied for a variance to the buffer zone requirements in accordance with 30 TAC Section 309.13(f) because meeting the buffer zone requirement by restrictive easement has been impossible and by nuisance odor control would be economically not feasible. The facility is located approximately 0.4 mile northeast of the intersection of State Highway 107 and Farm-to-Market Road 506, northeast of the City of Santa Rosa in Cameron County, Texas.

CITY OF TENAHA has applied for a renewal of TPDES Permit No. 10818-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 190,000 gallons per day. The facility is located adjacent to Hilliard Creek; approximately 2,400 feet south of U.S. Highway 84 and 3,300 feet east of U.S. Highway 96 in Shelby County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a major amendment to TPDES Permit No. 11722-001 to authorize the relocation of the outfall and construction of a new treatment plant with discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The interim (existing) facility is located about 3,000 feet northwest of the intersection of Farm-to-Market Road 1988 and Farm-to-Market Road 3126 and 300 feet east of Farm-to-Market Road 3126 in Polk County Texas. The final (new) facility will be located 4,000 feet northwest of the intersection of Farm-to-Market Road 3126 and State Park Road 65, and 500 feet west of Farm-to-Market Road 3126 in Polk County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 13285-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via surface irrigation of 8.5 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,000 feet south of Farm-to-Market Road 1716 and approximately 4,500 feet south-southeast of the intersection of State Highway 43 and Farm-to-Market Road 1716 in Rusk County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT AND SABINE RIVER AUTHORITY have applied for a renewal of Permit No. WQ0013857-001, which authorizes the disposal of treated domestic wastewater at a 30-day average flow not to exceed 4,375 gallons per day from November through April, 7,500 gallons per day during May and October, and 12,500 gallons per day from June through September, via evaporation and irrigation on 3.0 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3,500 feet south-southeast of Spring Point and approximately 4,000 feet northwest of Autumn Point near White Deer Reach on the southwest shore of Lake Tawakoni in Hunt County, Texas.

CITY OF WINONA has applied for a renewal of TPDES Permit No. WQ0010922001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located west of Harris Creek and south of Farm-to-Market Road 16, approximately 1000 feet due south of the intersection of Farm-to-Market Road 16 and State Highway 155 in Smith County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.**

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 58 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize operating the 350,000 gallons per day parallel treatment facilities as an interim phase II. The existing permit authorizes the discharge of treated domestic wastewater as a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 1,100 feet west of Kuykendahl Road and 2250 feet south of Farm-to-Market Road 1960 on the north and south sides of Bammel Village Drive in Harris County, Texas.

TRD-200600396

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2006



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 3, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P. O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 2001 Milenium Corporation dba Chevron Food Mart; DOCKET NUMBER: 2005-1771-PST-E; IDENTIFIER: Regulated Entity Reference Number (RN) 101572667; LOCATION: Carrollton, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$640; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Abed Brothers Corporation dba Texas Meat Market; DOCKET NUMBER: 2004-2053-PST-E; IDENTIFIER: Petroleum Storage Tank Registration Number 74363, RN101849701; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i) and the Code, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases and by failing to equip the pressurized piping with an automatic line leak detector; 30 TAC §334.10(b)(1)(C)(ii), by failing to have the required records readily accessible and available for inspection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that the permanent legible tags, labels, or markings were applied or affixed to the immediate area of the UST fill tubes; PENALTY: \$3,240; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Channel Shipyard Company, Inc.; DOCKET NUMBER: 2005-1609-AIR-E; IDENTIFIER: RN100218429; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: barge degassing, cleaning, and repair plant; RULE VIOLATED: 30 TAC §115.546(2)(A) and THSC, §382.085(b), by failing to maintain continuous temperature monitoring records; 30 TAC §117.479(a)(1) and THSC, §382.085(b), by failing to install and operate a totalizing



fuel flow meter; 30 TAC §116.615(2) and THSC, §382.085(b), by failing to operate within standard permit representations; and 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization to emit acrylates; PENALTY: \$12,528; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Chevron Phillips Chemical Company, L.P.; DOCKET NUMBER: 2005-1638-AIR-E; IDENTIFIER: RN102320850; LOCATION: near Borger, Hutchinson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.715(a), New Source Review (NSR) Flexible Air Permit Number 21918, and THSC, §382.085(b), by failing to comply with permitted emissions limits, by failing to keep complete records, by failing to control vapors from a loading operation, by failing to properly repair and monitor fugitive emission components, and by failing to use data required by the permit emissions calculations; and 30 TAC §122.146(5)(C) and (D), Federal Operating Permit Number 02164, and THSC, §382.085(b), by failing to include all instances of deviations in a report; PENALTY: \$19,829; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Chevron Phillips Chemical Company, L.P.; DOCKET NUMBER: 2005-1709-AIR-E; IDENTIFIER: RN1008725249; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 22690, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,080; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2005-1660-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 49140, and THSC, §382.085(b), by failing to comply with permitted emissions limits and allowed unauthorized emissions; PENALTY: \$5,760; ENFORCEMENT COORDINATOR: David Flores, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Cotton Center Producers, Inc.; DOCKET NUMBER: 2005-1617-MLM-E; IDENTIFIER: RN104751458; LOCATION: Lamesa, Dawson County, Texas; TYPE OF FACILITY: unauthorized industrial solid waste site; RULE VIOLATED: 30 TAC §111.201 and §335.2(a) and THSC, §382.085(b), by allegedly having conducted unauthorized disposal of cotton burr waste; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(8) COMPANY: Etoile Water Supply Corporation; DOCKET NUMBER: 2005-1438-PWS-E; IDENTIFIER: RN101192987; LOCATION: Etoile, Nacogdoches County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(g), (q), and (r), by failing to collect and submit bacteriological samples, by failing to issue a boil water notice, and by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the farthest reaches of the distribution system; PENALTY: \$648; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Flint Hill Resources, L.P.; DOCKET NUMBER: 2005-0018-AIR-E; IDENTIFIER: Air Account Numbers NE0120H and NE0122D, RN102534138 and RN100235266; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to prevent unauthorized volatile organic compound (VOC) emissions; 30 TAC §122.32 and THSC, §382.085(b), by failing to prevent a discharge of hydrogen sulfide; 30 TAC §101.20(3), §116.715(a), Air Flexible Permit Number 6308, and THSC, §382.085(b), by failing to maintain emissions at or below the limits authorized in the flexible permit; and 30 TAC §116.715(a), NSR Flexible Air Permit Number 8803A, and THSC, §382.085(b), by failing to prevent unauthorized VOCs from being released; PENALTY: \$14,800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Galveston County Landfill Texas, L.P.; DOCKET NUMBER: 2005-1501-MLM-E; IDENTIFIER: RN100221597; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.56(n)(1)(B) and MSW Permit Number 1149A, by failing to prevent the concentration of methane gas from exceeding the lower explosive limit for methane; 30 TAC §§330.114(5), 330.117(c), and 335.2(b) and MSW Permit Number 1149A, by failing to prevent the disposal of Class 1 industrial waste; 30 TAC §335.6(c), by failing to update the facility's notice of registration; 30 TAC §330.136(b)(3)(B) and 40 Code of Federal Regulations (CFR) §61.154(f), by failing to properly record the location, depth, and volume of each load of regulated asbestos-containing material placed in the landfill; and 30 TAC §330.130 and MSW Permit Number 1149A, by failing to immediately notify TCEQ of a landfill gas exceedance; PENALTY: \$8,650; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Lee-Var, Inc. dba Palmer of Texas; DOCKET NUMBER: 2005-1331-WQ-E; IDENTIFIER: RN100213594; LOCATION: near Andrews, Andrews County, Texas; TYPE OF FACILITY: fiberglass tank manufacturing; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26, and the Code, §26.121(a)(1), by failing to obtain an individual Texas Pollutant Discharge Elimination System (TPDES) storm water permit; PENALTY: \$3,968; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(12) COMPANY: Melvin Jerry Threadgill dba M&T Natural Stone; DOCKET NUMBER: 2005-1814-WQ-E; IDENTIFIER: RN104320882; LOCATION: Santo, Palo Pinto County, Texas; TYPE OF FACILITY: dimensional stone mining; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent noncompliance discharge of sediment to waters in the state; and 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000, and 40 CFR §122.26, by failing to fully develop storm water prevention plan erosion control measures and use erosion prevention measures and controls to reduce soil erosion in areas of the facility that have ongoing erosion or potential for soil erosion; PENALTY: \$2,640; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Pearsall; DOCKET NUMBER: 2005-1633-MLM-E; IDENTIFIER: RN104680772; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: MSW citizen collection station; RULE VIOLATED: 30 TAC §330.4(a), by failing to obtain proper authorization prior to the storage, processing, and disposal of MSW;

and 30 TAC §111.201 and THSC, §382.085(b), by failing to obtain proper authorization prior to the commencement of outdoor burning activities; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Reddy Energy, Inc. dba Bachman Lake Mobil; DOCKET NUMBER: 2005-1109-PST-E; IDENTIFIER: RN102368040; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the release detection records; 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records and by failing to record inventory volume measurements for regulated substance inputs; 30 TAC §334.7(d)(3), by failing to provide an amended UST registration; and 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i), (B)(ii), and (C), by failing to ensure that an application for renewal of a delivery certificate is properly and timely filed, by failing to make available to a common carrier a valid, current delivery certificate, and by failing to ensure that all USTs are properly identified; PENALTY: \$8,363; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Rohm and Haas Company; DOCKET NUMBER: 2005-1745-AIR-E; IDENTIFIER: RN104789474; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: acrylic and vinyl emulsions production; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to timely submit the semiannual deviation report; and 30 TAC §116.115(c) and §122.143(4), and Air Permit Number 27131, by failing to amend Air Permit Number 27131 to include butyl acrylate/methyl methacrylate on the product list prior to manufacturing; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Southwest Convenience Stores, L.L.C.; DOCKET NUMBER: 2005-1670-AIR-E; IDENTIFIER: RN102394368, RN100823913, RN102388345, RN102394756, RN102396702, RN102393685, RN102397601, RN102395662, RN102392214, RN102399094, RN102393170, RN102390960, RN102391331, RN102397189, and RN102389228; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum seven psi Reid vapor pressure requirements; PENALTY: \$13,424; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(17) COMPANY: Southwest Energy Distributors, Inc.; DOCKET NUMBER: 2005-1555-IWD-E; IDENTIFIER: RN104578117; LOCATION: Monahans, Ward County, Texas; TYPE OF FACILITY: fuel distributor and real estate holding company; RULE VIOLATED: 30 TAC §305.125(1), the Code, §26.121(a), and TPDES General Permit Number TXG830112, by failing to comply with permitted effluent limits; PENALTY: \$3,680; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(18) COMPANY: Texas Eastern Transmission, L.P.; DOCKET NUMBER: 2005-1608-AIR-E; IDENTIFIER: RN100217074; LOCATION: Huxley, Shelby County, Texas; TYPE OF FACILITY: gas compressor station; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Permit Number 56608, and THSC, §382.085(b), by allegedly having exceeded the permitted allowable of 395 pounds per hour of VOCs

during maintenance, startup, and shutdown activity; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Wend-XX, Inc. dba Exxon Superstation; DOCKET NUMBER: 2005-1813-PST-E; IDENTIFIER: RN101794949; LOCATION: Texarkana, Bowie County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.8(c)(4)(B) and (5)(C), by failing to ensure that the UST registration and self-certification forms are fully and accurately completed and by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied to the fill tube; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: \$2,880; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2005-1507-PWS-E; IDENTIFIER: RN101611275; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(4)(A)(i), by allegedly having failed in testing and certifying backflow prevention assemblies to be operating within specifications at least annually by a recognized backflow prevention assembly tester; PENALTY: \$8,237; ENFORCEMENT COORDINATOR: David Flores, (512) 239-1165; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200600374

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: January 24, 2006

## Office of the Governor

### Request for Applications (RFA) for the Juvenile Justice and Delinquency Prevention (JJDP) Act Fund - Title V Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local projects to implement comprehensive plans developed by communities under the fiscal year 2007 grant cycle.

**Purpose:** The purpose of the Title V - Juvenile Justice and Delinquency Prevention Act Fund is to reduce delinquency and youth violence by supporting communities in providing their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster a healthy and nurturing environment which supports the growth and development of productive and responsible citizens.

**Available Funding:** Federal funding is authorized under the Juvenile Justice and Delinquency Act of 2002, Title V, Public Law 107-273, codified as amended at 42 U.S.C. 5781 et seq. All grants awarded from this fund must comply with the requirements contained therein.

**Funding Levels:** Grantees are allowed a maximum of three years of funding (this includes any years previously funded for the same project). The minimum award amount is \$25,000 and the maximum award amount is \$250,000.

**Required Match:** Grantees must provide matching funds of at least thirty-four percent (34%) of total project expenditures. This requirement may be met through cash and/or in-kind contributions.

**Standards:** Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1,

Part 1, Chapter 3, and the statutes, requirements, and guidelines applicable to this funding. In addition grantees must comply with the federal regulations at 28 C.F.R. §31.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) legal services for adult offenders;
- (4) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;
- (5) overtime pay;
- (6) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- (7) vehicles or equipment for government agencies that are for general agency use;
- (8) weapons, ammunition, explosives or military vehicles;
- (9) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (10) promotional gifts;
- (11) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;
- (12) membership dues for individuals;
- (13) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting);
- (14) fundraising;
- (15) medical services; and
- (16) construction.

Eligible Applicants:

- (1) Units of local government; and
- (2) Native American Tribal Governments performing law enforcement functions.

Requirements:

(1) Each community applying for funds must have a local prevention policy board that will direct the project and develop a three-year delinquency prevention plan. The prevention plan must be based on an assessment of risk factors associated with the development of delinquent behavior in the community's children. This plan must address one or more of the following activities:

- (a) Alcohol and substance abuse prevention services;
- (b) Tutoring and remedial education;
- (c) Child and adolescent health and mental health services;
- (d) Recreation services;
- (e) Leadership and youth development activities;
- (f) Teaching accountability;
- (g) Assistance in the development of job training skills; and

(h) Other Data-driven evidence based prevention programs.

(2) Applicants must address one or more of the following Title V purpose areas:

- (a) Delinquency Prevention;
- (b) Gangs;
- (c) Mental Health Services;
- (d) Mentoring;
- (e) School Programs;
- (f) Substance Abuse; or
- (g) Youth Courts.

(3) In addition, all juvenile justice projects must address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

(a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.

(c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC). Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects must begin on or after September 1, 2006, and will expire on or before August 31, 2007.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

Preferences: Preference will be given to applicants that demonstrate cost effective programs and comprehensive approaches to service provision.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division, via email at: [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before May 1, 2006.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of government (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Lori Melcher at [lmelcher@governor.state.tx.us](mailto:lmelcher@governor.state.tx.us) or at (512) 463-1919.

TRD-200600393

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: January 25, 2006



**Request for Grant Applications (RFA) for the Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program**

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications under the Juvenile Justice and Delinquency Prevention Act fund for the state fiscal year 2007 grant cycle.

**Purpose:** The purpose of the JJDP Act Fund Program is to improve the juvenile justice system and develop effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency.

**Available Funding:** Federal funding is authorized under the Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 107-273, 42 U.S.C 5601 et seq., as amended. All grants awarded from this fund source must comply with the requirements contained therein.

**Funding Levels:** No minimum/maximum funding levels.

**Required Match:** No match required.

**Standards:** Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3, and the statutes, requirements, and guidelines applicable to this funding. In addition, grantees must comply with the federal regulations at 28 C.F.R. §31.

**Prohibitions:** Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) legal services for adult offenders;

(4) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;

(5) overtime pay;

(6) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(7) vehicles or equipment for government agencies that are for general agency use;

(8) weapons, ammunition, explosives or military vehicles;

(9) admission fees or tickets to any amusement park, recreational activity or sporting event;

(10) promotional gifts;

(11) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(12) membership dues for individuals;

(13) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

(14) fundraising;

(15) medical services; and

(16) construction.

**Eligible Applicants:**

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;

(4) Indian tribes performing law enforcement functions;

(5) Crime control and prevention districts;

(6) Universities;

(7) Colleges;

(8) Independent school districts;

(9) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

**Requirements:**

(1) Applicants must address one or more of the following JJDP purpose areas:

(a) Aftercare/Reentry;

(b) Alternatives to Detention;

(c) Court Services;

(d) Delinquency Prevention;

(e) Disproportionate Minority Contact;

(f) Diversion;

(g) Gangs;

(h) Jail Removal;

(i) Juvenile Justice System Improvement;

(j) Mental Health Services;

(k) Mentoring;

(l) Probation;

(m) School Programs;

(n) Sex Offender Programs;

(o) Substance Abuse; or

(p) Youth Courts.

(2) In addition, all juvenile justice projects must address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

(a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.

(c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC). Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

**Project Period:** Grant-funded projects must begin on or after September 1, 2006, and expire on or before August 31, 2007.

**Application Process:** Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

**Preferences:** Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to services provision.

**Closing Date for Receipt of Applications:** All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before May 1, 2006.

**Selection Process:**

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of government (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost effectiveness.

**Contact Person:** If additional information is needed, contact Lori Melcher at [lmelcher@governor.state.tx.us](mailto:lmelcher@governor.state.tx.us) or (512) 463-1919.

TRD-200600392

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: January 25, 2006



### Request for Grant Applications (RFA) for the Safe and Drug-Free Schools and Communities (SDFSC) Act Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that implement drug and violence prevention activities which compliment or support local independent school district activities during the state fiscal year 2007 grant cycle.

**Purpose:** The purpose of the SDFSC Act Fund Program is to support programs that prevent violence in and around schools; prevent the illegal use of alcohol, tobacco, and drugs; involve parents and communities; and are coordinated with related federal, state, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement.

**Available Funding:** Federal funding is authorized under the No Child Left Behind Act of 2001, Public Law 107-110.

**Standards:** Grantees must comply with the standards applicable to this funding source cited in Texas Administrative Code, Title 1, Part 1, Chapter 3, and the statutes, requirements, and guidelines applicable to this funding.

**Prohibitions:** Grant funds may not be used to support the following services, activities, or costs:

(1) legal services for adult offenders;

(2) admission fees or tickets to any amusement park, recreational activity or sporting event;

(3) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting);

(4) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;

(5) construction;

(6) food, meals, beverages, or other refreshments;

(7) fundraising;

(8) lobbying;

(9) medical services;

(10) membership dues for individuals;

- (11) overtime pay;
- (12) promotional gifts;
- (13) proselytizing or sectarian worship;
- (14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- (15) vehicles or equipment for government agencies that are for general agency use; and
- (16) weapons, ammunition, explosives or military vehicles.

**Eligible Applicants:**

- (1) Councils of governments (COGs);
- (2) Cities;
- (3) Counties;
- (4) Universities;
- (5) Colleges;
- (6) Independent school districts;
- (7) Nonprofit corporations;
- (8) Crime control and prevention districts;
- (9) State agencies;
- (10) Native American tribes;
- (11) Regional education service centers;
- (12) Community supervision and corrections departments;
- (13) Juvenile boards; and
- (14) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

**Requirements:** Grant activities must include:

- (1) Activities that complement and support local independent school district activities including developing and implementing activities to prevent and reduce violence associated with prejudice and intolerance;
- (2) Dissemination of information about drug and violence prevention; and
- (3) Development and implementation of community-wide drug and violence prevention planning and organizing.
- (4) All juvenile projects or applications for projects serving delinquent or at-risk youth must address at least one of the following:
  - (a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, and chronic delinquency.
  - (b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.
  - (c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.
  - (d) Disproportionate Minority Contact. Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practice, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

**Project Period:** Grant-funded projects must begin on or after September 1, 2006, and will expire on or before August 31, 2007.

**Application Process:** Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

**Preferences:** Preference will be given to:

- (1) programs or activities that prevent illegal drug use and violence for:
  - (a) children and youth who are not normally served by State educational agencies or local educational agencies; and
  - (b) populations that need special services or additional resources (such as youth in juvenile detention facilities, runaway or homeless children and youth, pregnant and parenting teenagers, and school dropouts).
- (2) programs that pursue a comprehensive approach to drug and violence prevention that includes providing and incorporating mental health services related to drug and violence prevention.

**Closing Date for Receipt of Applications:** All applications must be submitted to the Office of the Governor, Criminal Justice Division (CJD), via email to [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before April 3, 2006.

**Selection Process:**

- (1) For eligible local and regional projects:
  - (a) Applications are forwarded by CJD to the appropriate regional council of government (COG).
  - (b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.
  - (c) CJD will accept priority listings that are approved by the COG's executive committee.
  - (d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.
- (2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

**Contact Person:** If additional information is needed, contact Lori Melcher at [lmelcher@governor.state.tx.us](mailto:lmelcher@governor.state.tx.us) or at (512) 463-1919.

TRD-200600394

David Zimmerman  
Assistant General Counsel  
Office of the Governor  
Filed: January 25, 2006



## Request for Grant Applications (RFA) for the State Criminal Justice Planning (Fund 421) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce crime and improve the criminal or juvenile justice system during the state fiscal year 2007 grant cycle.

**Purpose:** The purpose of the Fund 421 Program is to reduce crime and improve the criminal or juvenile justice systems.

**Available Funding:** The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees. Sections 102.056 and 102.075 of the Texas Code of Criminal Procedure establish state funding and Section 772.006 of the Texas Government Code designates CJD as the Fund's administering agency.

**Standards:** Grantees must comply with the standards applicable to the Fund 421 Program as found in the Texas Administrative Code, Title 1, Part 1, Chapter 3, and the statutes, requirements, and guidelines applicable to this funding.

**Prohibitions:** Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
  - (2) lobbying;
  - (3) legal services for adult offenders;
  - (4) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;
  - (5) overtime pay;
  - (6) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
  - (7) vehicles or equipment for government agencies that are for general agency use;
  - (8) weapons, ammunition, explosives or military vehicles;
  - (9) admission fees or tickets to any amusement park, recreational activity or sporting event;
  - (10) promotional gifts;
  - (11) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;
  - (12) membership dues for individuals;
  - (13) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);
  - (14) fundraising;
  - (15) medical services; and
  - (16) construction.
- Eligible Applicants:**
- (1) State agencies;
  - (2) Units of local government;
  - (3) Independent school districts;
  - (4) Nonprofit corporations;

- (5) Native American tribes;
- (6) Crime control and prevention districts;
- (7) Universities;
- (8) Colleges;
- (9) Hospital districts;
- (10) Juvenile boards;
- (11) Regional education service centers;
- (12) Community supervision and corrections departments;
- (13) Councils of governments (COGs); and
- (14) Faith-based organizations that provide direct services. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

### Requirements:

- (1) Projects must focus on reducing crime and improving the criminal or juvenile justice system;
- (2) All juvenile projects or applications for projects serving delinquent or at-risk youth must address at least one of the following:
  - (a) **Family Stability.** Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent and chronic delinquency.
  - (b) **Substance Abuse Early Intervention and Prevention.** Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.
  - (c) **Education.** Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.
  - (d) **Disproportionate Minority Contact.** Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.
  - (e) **Justice System Impact.** Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.
  - (f) **Gang Prevention.** Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.
  - (g) **Rural Access.** Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.
  - (h) **Training.** Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

**Project Period:** Grant-funded projects must begin on or after September 1, 2006, and will expire on or before August 31, 2007.

**Application Process:** Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

Preferences: Preference will be given to applicants who demonstrate cost effective programs focused on a comprehensive and effective approach to services.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before April 3, 2006.

**Selection Process:**

(1) All applications will be reviewed for eligibility upon submission to CJD.

(2) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) The executive committee of the COG will approve the "Priority Listing" of recommended grant applications for funding and will forward this list to CJD.

(d) CJD will make all final funding decisions based upon COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(3) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Whitney Stark at [whitney.stark@governor.state.tx.us](mailto:whitney.stark@governor.state.tx.us) or (512) 463-1919.

TRD-200600395

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: January 25, 2006



**Request for Grant Applications (RFA) for the S.T.O.P. Violence Against Women Act (VAWA) Fund Program**

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce and prevent violence against women during the state fiscal year 2007 grant cycle.

Purpose: The purpose of the VAWA Fund Program is to assist in developing and implementing effective victim-centered law enforcement, prosecution, and court strategies to address violent crimes against women and the development and enhancement of victim services in cases involving crimes against women.

Available Funding: Federal funding is authorized under the Violent Crime Control and Law Enforcement Act of 1994; Omnibus Crime Control and Safe Streets Act of 1968, as amended, §2001-6, 42 U.S.C. 3796gg to 3796gg5, and reauthorized under Division B of the Victims of Trafficking and Violence Protection Act of 2000, §1103.

**Funding Levels:**

(1) Minimum grant award - \$5,000.

(2) Maximum grant award for Violence Against Women Courts - \$250,000.

Required Match: Grantees must provide matching funds totaling at least twenty-five percent (25%) of total project expenditures. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to this funding source cited in Texas Administrative Code, Title 1, Part 1, Chapter 3 and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grantees may not use grant funds or program income to support the following services, activities, and costs:

(1) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(2) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting), including the Texas Crime Victims Compensation Fund;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) cash payments to victims;

(5) employment agency fees;

(6) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way;

(7) fundraising activities;

(8) legal assistance and representation in civil matters other than protective orders;

(9) legal defense services for perpetrators of violence against women;

(10) liability insurance on buildings;

(11) lobbying activities;

(12) major maintenance on buildings;

(13) membership dues for individuals;

(14) newsletters, including supplies, printing, postage and time;

(15) overtime;

(16) promotional gifts;

(17) property loss. Grant funds may not be used to reimburse victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(18) proselytizing or sectarian worship;

(19) services for programs that focus on children and/or men;

(20) sexual assault or domestic violence prevention curricula developed for schools;

(21) transportation, lodging, per diem, or any related costs for participants, when grant funds are used to develop and conduct training;

(22) vehicles or equipment for governmental agencies that are for general agency use; and

(23) weapons, ammunition, explosives, or military vehicles.

**Eligible Applicants:**

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;



- (4) Indian tribal governments;
- (5) Councils of governments (COGs);
- (6) Universities;
- (7) Colleges;
- (8) Community supervision and corrections departments;
- (9) Crime control and prevention districts; and
- (10) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

**Requirements:**

(1) All applicants must meet at least one of the following eligible purpose areas established by the federal Office on Violence Against Women and codified by 28 C.F.R. §90:

(a) training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women;

(b) developing, training or expanding units of law enforcement officers, judges, other court personnel, and prosecutors specifically targeting violent crimes against women;

(c) developing more effective police, court, and prosecution policies, protocols, orders, and services devoted to preventing, identifying, and responding to violent crimes against women;

(d) developing, installing, or expanding data collection and communication systems, including computerized systems linking police, prosecutors, and the courts or to identify and track arrests, protection orders, prosecutions, and convictions;

(e) developing, enlarging, or strengthening victim services programs including improving delivery of services to underserved populations and providing specialized domestic violence court advocates;

(f) developing, expanding or strengthening programs addressing stalking;

(g) developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women;

(h) supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by state funds, to coordinate the response of state law enforcement agencies, prosecutors, courts, victim services agencies, and other state agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

(i) training of sexual assault forensic medical personnel examiners in the collection and preservation of evidence, analysis, prevention, and providing expert testimony and treatment of trauma related to sexual assault;

(j) developing, enlarging, or strengthening programs to assist law enforcement, prosecutors, courts, and others to address the needs and circumstances of older and disabled women who are victims of domestic violence or sexual assault, including recognizing, investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other victim services to such older and disabled individuals; or

(k) providing assistance to victims of domestic violence and sexual assault in immigration matters.

**Project Period:** Grant-funded projects must begin on or after September 1, 2006, and will expire on or before August 31, 2007.

**Application Process:** Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

**Preferences:** Preference will be given to applicants that:

(1) demonstrate cost-effective programs focused on proven or promising approaches to service provision; and

(2) focus on developing and strengthening:

(a) services for violent crimes against women; or

(b) effective law enforcement, prosecution, and court strategies to combat violent crimes against women.

**Closing Date for Receipt of Applications:** All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before April 3, 2006.

**Selection Process:**

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional councils of government (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

**Contact Person:** If additional information is needed, contact Christina Grady at [cgrady@governor.state.tx.us](mailto:cgrady@governor.state.tx.us) or (512) 463-1919.

TRD-200600391

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: January 25, 2006



## Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Del Rio	Del Rio Heart Institute & Diabetes Center	L05950	Del Rio	00	01/10/06
Houston	Cardiac Nuclear Imaging Inc	L05962	Houston	00	12/29/05
Mt Vernon	East Texas Medical Center Mt Vernon	L05954	Mt Vernon	00	01/10/06

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Arlington	Imaging and Medical Diagnostic Specialists PA DBA Central Imaging of Arlington	L04876	Arlington	07	01/09/06
Arlington	The University of Texas at Arlington	L00248	Arlington	43	01/03/06
Arp	Baker Tank Company	L02599	Arp	23	01/05/06
Austin	Cedra Corporation	L04427	Austin	14	01/06/06
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L05856	Austin	03	01/09/06
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L00740	Austin	90	01/04/06
Austin	ARA Imaging	L05862	Austin	04	01/10/06
Austin	Genexpress Informatics Inc	L05826	Austin	01	01/02/06
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP DBA North Hills Outpatient Imaging Center	L03455	Bedford	41	01/04/06
Brownwood	Brownwood Specialty Group DBA BSG Imaging	L05878	Brownwood	01	01/03/06
Carthage	East Texas Medical Center Carthage	L02540	Carthage	33	01/05/06
Columbus	Columbus Community Hospital	L03508	Columbus	13	01/10/06
Corpus Christi	McTurbine Inc	L04341	Corpus Christi	05	01/10/06
Corpus Christi	Mestena Uranium LLC	L05360	Corpus Christi	07	12/20/05
Corpus Christi	Riverside Hospital Inc DBA Northwest Regional Hospital	L02977	Corpus Christi	36	01/02/06
Corsicana	Guardian Industries Corporation	L05213	Corsicana	02	01/05/06
Dallas	Retina Foundation of the Southwest	L05528	Dallas	03	01/06/06
Dallas	Cardiovascular Consultants of North Texas LLP	L04627	Dallas	14	01/09/06
Dallas	Southern Methodist University Department of Biological Sciences	L02887	Dallas	18	01/02/06
Dallas/Ft Worth	GE Lighting Lighting Business Group	L03819	Dallas/Ft Worth	15	01/10/06
Edna	Jackson County Hospital District DBA Jackson County Hospital	L04842	Edna	08	01/09/06
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	67	01/04/06
El Paso	Maple Chase Company	L03815	El Paso	13	01/10/06
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05771	El Paso	05	01/05/06
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	57	01/06/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	17	01/03/06
Friendswood	Iso Tex Diagnostics Inc	L02999	Friendswood	41	01/03/06
Gonzales	Gonzales Healthcare System DBA Memorial Hospital	L03473	Gonzales	11	01/02/06
Henderson	Henderson Memorial Hospital	L03466	Henderson	19	01/04/06
Houston	Harris County Hospital District DBA LBJ General Hospital	L04412	Houston	31	01/06/06
Houston	Diagnostic Clinic of Houston Nuclear Medicine	L03452	Houston	31	01/04/06
Houston	Complete Cardiac Care	L05218	Houston	05	01/04/06
Houston	St Lukes Episcopal Health System Corporation DBA St Lukes Episcopal Health System and Texas Heart Institute	L00581	Houston	82	01/02/06
Houston	ALMAC LLC	L05721	Houston	01	01/03/06
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Humble	59	01/03/06
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	41	01/10/06
La Porte	E I DuPont de Nemours & Company	L00314	La Porte	79	01/05/06
La Porte	Total Petrochemicals USA Inc	L04640	La Porte	15	01/05/06
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	24	01/02/06
Lancaster	Medical Center at Lancaster	L03342	Lancaster	24	01/06/06
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular Consultants PA	L04687	Laredo	10	01/04/06
Longview	Eastman Chemicals Company Texas Operations	L00301	Longview	102	01/03/06
Longview	Longview Regional Hospital Inc DBA Longview Regional Medical Center	L02882	Longview	36	01/02/06
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	36	01/10/06
Lubbock	W Chuck Brogan III MD PhD PA DBA Brogan Heart Center	L05488	Lubbock	05	01/04/06
Mesquite	Long Star HMA LP DBA Mesquite Community Hospital	L02733	Mesquite	37	01/04/06
Mesquite	Texas Oncology PA DBA Texas Cancer Center Mesquite	L05741	Mesquite	03	01/03/06
Midland	Endeavor Energy Resources LP	L05745	Midland	06	01/05/06
Midland	New Tech Systems Inc	L05098	Midland	02	01/05/06
Mount Pleasant	TXU Power Monticello Plant	L04565	Mount Pleasant	10	01/10/06
Pasadena	Cardiac Medical Solutions DBA Heartscan of Pasadena	L05905	Pasadena	01	01/03/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	35	01/02/06
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	32	01/04/06
Richmond	Worden Gravity Meter Company	L04407	Richmond	04	01/06/06
Round Rock	Columbia/St Davids Healthcare System LP DBA Medical Center of Round Rock	L03469	Round Rock	40	01/04/06
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	103	01/02/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	San Antonio Heart Associates PA	L04860	San Antonio	19	01/09/06
San Antonio	Alamo Heart Associates PA	L04909	San Antonio	06	01/04/06
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	215	01/10/06
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04305	San Antonio	36	01/02/06
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04927	San Antonio	24	01/02/06
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	22	01/02/06
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	150	01/02/06
San Antonio	Petnet Pharmaceuticals Inc DBA Petnet San Antonio	L05569	San Antonio	10	12/30/05
San Marcos	Texas State University	L03321	San Marcos	21	01/03/06
Sugar Land	Stillmeadow Inc	L04497	Sugar Land	13	01/05/06
Temple	Specialty Pharmacy Services Inc	L04883	Temple	23	01/10/06
Temple	Specialty Pharmacy Services Inc	L04883	Temple	22	12/30/05
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	46	01/10/06
The Woodlands	The Woodlands Sports Medicine Centre PA	L04390	The Woodlands	13	01/06/06
Throughout Tx	LOTUS LLC	L05147	Andrews	11	01/02/06
Throughout Tx	Global X-ray & Testing Corp	L03663	Aransas Pass	96	01/09/06
Throughout Tx	Troxler Electronic Laboratories	L01296	Arlington	39	01/05/06
Throughout Tx	ECS-Texas LLP	L05319	Austin	03	01/04/06
Throughout Tx	Holt Engineering Inc	L02752	Austin	14	01/04/06
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	111	01/05/06
Throughout Tx	Kleinfelder	L01351	Austin	50	01/03/06
Throughout Tx	Lower Colorado River Authority	L02738	Austin	38	01/04/06
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	49	01/05/06
Throughout Tx	Texas A&M University Environmental Health & Safety Department	L05683	College Station	03	01/02/06
Throughout Tx	DMG Equipment Co LTD DBA Pavers Supply Company	L04856	Conroe	06	01/09/06
Throughout Tx	City of Dallas Water Utilities	L03829	Dallas	15	01/10/06
Throughout Tx	Rone Engineering Services LTD	L02356	Dallas	30	01/04/06
Throughout Tx	Garner Environmental Services Inc	L05228	Deer Park	01	01/04/06
Throughout Tx	Littleton Inspection Services	L04835	DeSoto	07	01/09/06
Throughout Tx	H & H X-ray Services Inc	L02516	Flint	56	01/02/06
Throughout Tx	Ellerbe-Walczak Inc	L04440	Haltom	12	01/06/06
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	206	01/05/06
Throughout Tx	DMS Imaging DBA DMS Computed Imaging DMS Interim	L05594	Houston	04	01/09/06
Throughout Tx	Professional Service Industries Inc	L04942	Houston	19	01/05/06
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	16	01/03/06
Throughout Tx	AITEC USA Inc	L05718	Houston	18	01/04/06
Throughout Tx	Industrial Nuclear Company	L04508	Houston	05	01/05/06
Throughout Tx	Component Sales and Service Inc	L02243	Houston	23	01/05/06
Throughout Tx	D-Arrow Inspection Inc	L03816	Houston	78	01/10/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	HVJ Associates Inc	L03813	Houston	29	01/09/06
Throughout Tx	USA Environment LP	L05616	Houston	02	01/04/06
Throughout Tx	Nuclear Sources & Services Inc	L02991	Houston	30	12/30/05
Throughout Tx	Austin Bridge & Road	L04629	Irving	16	01/11/06
Throughout Tx	Quest Trutec LP	L03913	La Porte	62	01/05/06
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	125	01/04/06
Throughout Tx	Pickett Jacobs Consultants Inc A Terracon Company	L03690	Lufkin	20	01/09/06
Throughout Tx	Anatec Inc	L04865	Nederland	64	01/09/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	101	01/02/06
Throughout Tx	Midwest Inspection Services	L03120	Perryton	85	01/11/06
Throughout Tx	Catch A Fault	L02725	Ponder	19	01/04/06
Throughout Tx	Sunmount Corporation	L03799	Roanoke	13	01/09/06
Throughout Tx	United Surveys Inc	L01570	Rosenberg	20	01/05/06
Throughout Tx	IHI Southwest Technologies Inc	L05278	San Antonio	09	01/10/06
Throughout Tx	IHI Southwest Technologies Inc	L05279	San Antonio	05	01/10/06
Throughout Tx	San Antonio River Authority	L02706	San Antonio	11	01/13/06
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	40	01/10/06
Throughout Tx	Accurate Logging & Perforating Inc	L04221	Tyler	09	01/05/06
Throughout Tx	Soloco Texas LP	L04708	Winnie	14	01/04/06
Throughout Tx	Grimes and Associates Consulting Engineers LP	L04616	Wolfforth	10	01/10/06
Tyler	East Texas Medical Center	L00977	Tyler	128	01/10/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	118	01/06/06
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	15	01/04/06
Whitesboro	Hartman and Easter PC DBA Performance Equine Associates	L05546	Whitesboro	01	01/06/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Andrews	Andrews County Hospital District DBA Permian Regional Medical Center	L03158	Andrews	21	01/03/06
Arlington	D Harris Consulting	L04845	Arlington	07	01/03/06
Plano	Texas Regional Heart Center PA DBA Legacy Heart Center	L03704	Plano	30	01/05/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Bryan	Gem Microelectronics Materials LLC	L05731	Bryan	01	01/03/06
Wharton	Gulf Coast Hospital LP	L01390	Wharton	23	01/04/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200600386  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 24, 2006



**Notice of an Agreed Order Issued on January 23, 2006 to Registrant Hemmo A. Bosscher, M.D., P.A.**

An Agreed Order is hereby issued by the Department of State Health Services (department) to Hemmo A. Bosscher, M.D., P.A., (registration #R29371-000) of Lubbock. A total penalty of \$2,000 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600385  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 24, 2006



**Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation of Registrant KI4U, Inc.**

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to KI4U, Inc. (License #L05515-000) of Gonzales. A total penalty of \$4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600384  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 24, 2006



## **Texas Department of Housing and Community Affairs**

### **Notice of Public Hearing**

#### **Multifamily Housing Revenue Bonds (Beverly Place Apartments) Series 2006**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Travis Elementary, 1115 Lakeview Avenue, Port Arthur, Jefferson County, Texas 77642, at 6:00 p.m. on February 23, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$1,700,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to VOA Texas Beverly Place, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 124-unit multifamily residential rental development located at 5307 Gulfway Drive, Groves, Jefferson County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600377  
Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 24, 2006

◆ ◆ ◆  
Notice of Public Hearing

**Multifamily Housing Revenue Bonds (Creekside Manor Senior Community Apartments) Series 2006**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Cedar Valley Elementary School, 4801 Chantz Drive, Killeen, Bell County, Texas 76542, at 6:30 p.m. on February 22, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$10,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to OHC/Killeen, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily senior housing development (the "Development") described as follows: 180-unit multifamily senior residential rental development to be located at approximately 200 yards east of the southeast corner of the intersection of Highway 190 and O. W. Curry and approximately 300 feet south of the Highway 190 service road, Bell County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600378  
Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 24, 2006

◆ ◆ ◆  
Notice of Public Hearing

**Multifamily Housing Revenue Bonds (Generations at Mansfield Apartments) Series 2006**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Mary Orr Intermediate, 2900 East Broad Street, Mansfield, Tarrant County, Texas 76063, at 6:00 p.m. on February 21, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$16,100,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the

Bonds will be loaned to GS 360 Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily intergenerational residential rental development to be located approximately 1,000 feet north of South Miller Road and to the east of the Highway 360 frontage road and adjacent to Mansfield National Golf Club (located at 3750 National Parkway), Tarrant County, Texas. A physical address has not been assigned by the City of Mansfield. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600390  
Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 24, 2006

◆ ◆ ◆  
Notice of Public Hearing on Section 8 Program 2006 Annual Plan

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P.L. 205-276 or 42 United States Code 1437 (c-1)) requires the Texas Department of Housing and Community Affairs (the Department) to prepare a 2006 Annual Plan. Title 24, Section 903.17 of the Code of Federal Regulations requires that the Department conduct a public hearing regarding this plan. The Department will hold a public hearing to receive comments from any interested party for the development of the Department's 2006 Annual Plan. The hearing will take place at the following time and location:

**March 16, 2006**

**Texas Department of Housing and Community Affairs**

**221 East 11th Street, Room 125**

**Austin, Texas**

**1:30 PM - 4:30 PM**

The proposed 2006 Annual Plan and all supporting documentation are available to the public for viewing at the Department's main office, 221 East 11th, Attention: Section 8 Program, Austin, Texas on weekdays during the hours of 8:00 AM until 4:30 PM. The proposed plan will

also be available for viewing on the Department's website at [www.td-hca.state.tx.us/sec8.htm](http://www.td-hca.state.tx.us/sec8.htm).

Questions or requests for additional information may be directed to E. E. Fariss, Director, Community Affairs Division at [efariss@td-hca.state.tx.us](mailto:efariss@td-hca.state.tx.us) or by mail P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3897. Comments must be received by 5:00 PM Friday, March 24, 2006.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled hearing.

TRD-200600376  
Edwina Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 24, 2006

## Houston-Galveston Area Council

### Request for Proposal

The Houston-Galveston Area Council solicits qualified organizations to assist The WorkSource in the creation of Equal Opportunity (EO) standards and guidelines for the Gulf Coast Workforce system. A proposal package will be available for download at <http://theworksource.org/4contractor/rfp.html> and <http://h-gac.com> beginning at 12:00 noon Central Standard Time on Monday, January 23, 2006. Hard copies of the proposal package will also be available at that time. There will not be a bidders' conference for this procurement. Proposals are due at H-GAC offices on or before 5:00 p.m. Central Standard Time on Thursday, February 9, 2006. Mailed proposals must be postmarked no later than Tuesday, February 7, 2006. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at 713.627.3200 or [ckimmick@theworksource.org](mailto:ckimmick@theworksource.org) or visit the web site to request a proposal package.

TRD-200600344  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: January 23, 2006

## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Livonia, Michigan.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200600286  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: January 19, 2006

### Company Licensing

Application for incorporation to the State of Texas by TEXAS HERITAGE INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Brenham, Texas.

Application to change the name of PACIFIC SPECIALTY LLOYDS to PACIFIC PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Menlo Park, California.

Application to change the name of MONUMENTAL GENERAL CASUALTY COMPANY to WORK FIRST CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in Elkton, Maryland.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200600403  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: January 25, 2006

### Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2635, on February 15, 2006 at 10:30 a.m. in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, concerning 28 TAC §21.1004 relating to the use of residential property insurance claims in rating programs, including surcharge and claims-free programs.

The proposed new section and the statutory authority for the proposed section were published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7994).

TRD-200600365  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: January 23, 2006

## Texas Lottery Commission

### Instant Game Number 637 "3 of a Kind"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 637 is "3 OF A KIND". The play style is "key symbol match with doubler".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 637 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 637.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q,



J, 10, 9, 8, 7, 6, 5, 4, 3, 2, JOKER SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000 and \$75,000.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 637 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
JOKER SYMBOL	JKR
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 637 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize- A prize of \$1,000, \$5,000 or \$75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (637), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 637-0000001-001.

L. Pack - A pack of "3 OF A KIND" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3 OF A KIND" Instant Game No. 637 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "3 OF A KIND" Instant Game is determined once the latex on the ticket is scratched off to expose 60 (sixty) Play Symbols. If a player reveals 3 (three) matching cards within the same hand, the player wins the prize shown for that hand. If the player reveals a JOKER SYMBOL, the player instantly wins DOUBLE the prize shown for that hand. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 60 (sixty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 60 (sixty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 60 (sixty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 60 (sixty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No four or more like non-winning prize symbols on a ticket.
- C. No duplicate non-winning hands on a ticket (in the same order.)
- D. No four or more like play symbols within a hand.
- E. No hand will create a full house or straight.
- F. The JOKER SYMBOL will only appear once on intended winning tickets as dictated by the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "3 OF A KIND" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3 OF A KIND" Instant Game prize of \$1,000, \$5,000 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "3 OF A KIND" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp pro-

gram or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "3 OF A KIND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "3 OF A KIND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

## 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 637. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 637 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	806,400	6.25
\$10	369,600	13.64
\$15	134,400	37.50
\$20	100,800	50.00
\$50	67,200	75.00
\$100	7,896	638.30
\$500	588	8,571.43
\$1,000	333	15,135.14
\$5,000	30	168,000.00
\$75,000	6	840,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.39. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 637 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 637, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200600312

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 20, 2006



Instant Game Number 649 "Bubble Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 649 is "BUBBLE BUCKS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 649 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 649.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 649 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FRN
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
31	THO
32	THW
33	THT
34	THF
35	THV
36	THX
37	THS
38	THE
39	THN
40	FRY

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 649 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>THR</b>	<b>\$3</b>
<b>FIV</b>	<b>\$5</b>
<b>TEN</b>	<b>\$10</b>
<b>TWN</b>	<b>\$20</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize- A prize of \$1,000 or \$30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (649), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 649-0000001-001.

L. Pack - A pack of "BUBBLE BUCKS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BUBBLE BUCKS" Instant Game No. 649 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BUBBLE BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 37 (thirty-seven) Play Symbols. A player scratches the TUB NUMBERS play symbols; then scratches all of the BUBBLE NUMBERS play symbols which exactly match any of the TUB NUMBERS play symbols. A player wins the prize shown in the prize legend for that number of bubbles matched. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 37 (thirty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 37 (thirty-seven) Play Symbols under the latex overprint on the front

portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 37 (thirty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 37 (thirty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No duplicate numbers will appear in the TUB NUMBERS play area.

C. No duplicate numbers will appear in the BUBBLE NUMBERS play area.

D. The TUB NUMBERS play area contains fifteen (15) numbers. The BUBBLE NUMBERS play area contains twenty-two (22) numbers.

E. TUB NUMBERS will range from one (01) to forty (40). BUBBLE NUMBERS will range from one (01) to forty (40).

F. There will never be more than fifteen (15) matches on winning or non-winning tickets.

G. No ticket will win more than one (1) instant prize as per the prize structure.

H. Only the highest prize will be paid per ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BUBBLE BUCKS" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification,

make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BUBBLE BUCKS" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BUBBLE BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BUBBLE BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BUBBLE BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 649. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 649 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	852,000	7.04
\$5	516,000	11.63
\$10	120,000	50.00
\$20	60,000	100.00
\$50	48,000	125.00
\$100	8,250	727.27
\$500	1,400	4,285.71
\$1,000	25	240,000.00
\$30,000	7	857,142.86

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.74. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 649 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 649, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200600313  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: January 20, 2006

**North Central Texas Council of Governments**



## Notice of Suspension of Due Date for Consultant Responses to Request for Proposals

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice of Request for Proposal (RFP) suspension of due date. The NCTCOG suspended the due date of January 20, 2006 for consultant responses to the Request for Proposals to Manage the Operations and Activities of an Air Quality Public Education and Information Program's Business Community Awareness Campaign, Conduct a Business Oriented Pilot Program, and to Perform Outreach to the North Texas Business Community. This RFP was originally issued by NCTCOG on December 16, 2005.

TRD-200600399  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: January 25, 2006

## Permian Basin Workforce Development Board

### Request for Proposals for Workforce Services

The Permian Basin Workforce Development Board announces the release of a Request for Proposal (RFP) for workforce services effective February 8, 2006. All interested private not-for-profit, private for-profit, or public agencies/organizations are invited to submit a proposal. The purpose of the RFP is to purchase services to manage and operate the workforce network center system. The selected contractor will provide workforce services to employers, job seekers, and youth in a business-driven environment. Services will be delivered in the 17 counties of the Permian Basin: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler.

A RFP packet may be obtained beginning February 8, 2006 by contacting: Gail Dickenson, Permian Basin Workforce Development Board, P.O. Box 61947, Midland, Texas 79711, telephone (432) 563-5239, fax (432) 561-8785.

The deadline for submitting a proposal is March 22, 2006 at 5:00 p.m. Central Daylight Savings Time. A mandatory bidder's conference will be held February 24, 2006 at the Center for Energy and Economic Diversification.

TRD-200600367  
Gail Dickenson  
Deputy Director  
Permian Basin Workforce Development Board  
Filed: January 23, 2006

## Public Utility Commission of Texas

### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 18, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership, doing business as Time Warner Cable, for a State-Issued Certificate of Franchise Authority, Project Number 32301 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes all areas within the boundaries of the City of Lacy-Lakeview, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32301.

TRD-200600369  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 23, 2006

### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 19, 2006, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of WPS Energy Services, Incorporated for Retail Electric Provider (REP) Certification, Docket Number 32303 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 10, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32303.

TRD-200600370  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 23, 2006

### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 17, 2006, New Edge Networks filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60282. Applicant intends to reflect a change in ownership/control.

The Application: Application of New Edge Networks for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32291.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 8, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at

(512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32291.

TRD-200600311  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 20, 2006



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 19, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of NationsLine Central, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 32308 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas, Verizon, and Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 8, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32308.

TRD-200600371  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 23, 2006



#### Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule 26.214

Notice is given to the public of the filing on January 18, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC study on or about January 30, 2006.

Docket Title and Number: Application of Central Telephone Company of Texas d/b/a Sprint for Approval of Long Run Incremental Cost Study to Introduce Vanity Listings Pursuant to P.U.C. Substantive Rule 26.214, Docket Number 32298.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the Long Run Incremental Cost Study referencing Docket Number 32298. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission

at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 32298.

TRD-200600287  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 19, 2006



#### Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule 26.214

Notice is given to the public of the filing on January 18, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC study on or about January 30, 2006.

Docket Title and Number: Application of United Telephone Company of Texas, Inc. d/b/a Sprint for Approval of Long Run Incremental Cost Study to Introduce Vanity Listings Pursuant to P.U.C. Substantive Rule 26.214, Docket Number 32299.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the Long Run Incremental Cost Study referencing Docket Number 32299. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 32299.

TRD-200600288  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 19, 2006



#### Notice of Petition for Approval of Fuel-Related Provisions of Rate Agreement

Notice is given to the public of petition for approval of fuel-related provisions of rate agreement filed with the Public Utility Commission of Texas on January 17, 2006.

Docket Style and Number: Petition of El Paso Electric Company and the City of El Paso for Approval of Fuel-Related Provisions of Rate Agreement. Docket Number 32289.

The Application: El Paso Electric Company (EPE) and the City of El Paso (City) filed an application with the Public Utility Commission of Texas (commission) for approval of the Rate Agreement entered into by the City and EPE. Alternatively, EPE and the City request a good cause exception to P.U.C. Substantive Rule 25.236 to implement the fuel-related provisions of the Rate Agreement. The Proposed Rate Agreement, in effect on July 1, 2005, extends the existing base rate freeze within the City of El Paso and the treatment of certain fuel-related costs and expenses previously established in the Agreed Order and Stipulation (Stipulation) in Docket Number 12700, *Application of El Paso Electric Co. for Authority to Change Rates and for Approval of Reacquisition of Palo Verde Leased Assets* (Aug. 30, 1995). The Stipulation adopted in Docket Number 12700 required EPE to reconcile its

fuel and purchased power costs according to Commission Substantive Rules in effect on July 1, 1995, required that EPE share wheeling revenues and margins on off-system sales with its Texas customers, and continued performance standards for the Palo Verde Nuclear Generating Station.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32289.

TRD-200600318  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 20, 2006



## Stephen F. Austin State University

### Notice of Consultant Contract Renewal

Stephen F. Austin State University, Nacogdoches, Texas, intends to renew a contract for environmental services with Hydrex, 1128 N.W. Stallings, Nacogdoches, Texas 75964-3428. The firm will perform environmental assessments for projects as requested.

The original contract was in the sum of \$45,000 and was published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7788). The contract will be renewed beginning February 19, 2006 and continuing through August 31, 2011, with a total amount not to exceed \$150,000.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Diana Boubel, Director of Purchasing, Stephen F. Austin State University, P.O. Box 13030, SFA Station, Nacogdoches, Texas 75962; e-mail dboubel@sfasu.edu; fax (936) 468-4282; telephone (936) 468-4037.

TRD-200600320  
R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
Filed: January 20, 2006



## Texas Department of Transportation

### Notice of Intent, Grand Parkway (SH99) Segments H and I-1

Pursuant to 43 TAC §2.43(c)(8)(B), the Texas Department of Transportation (TxDOT), in cooperation with the Federal Highway Administration (FHWA) and the Grand Parkway Association, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for transportation alternatives included in Segments H and I-1 of the proposed Grand Parkway. Segments H and I-1 are located on the northeast side of the greater Houston metropolitan area and span the area from US 59 (N) to IH 10 (E) generally between FM 2100 and SH 146 in Montgomery, Harris, Liberty, and Chambers counties, a distance of approximately 36 miles.

The proposed Grand Parkway is planned as a 182-mile circumferential highway facility around the greater Houston metropolitan area. It would provide access to radial freeways and would serve as a third loop around the City of Houston. The Grand Parkway has been divided into 11 segments of independent utility. Currently, Segment D (US 59 S to IH 10 W) of the Grand Parkway is open to the traveling public. Segment D is 19 miles long and is located on the southwest side of the greater Houston metropolitan area. The remaining Segments A (SH 146 to IH 45 S), B (IH 45 S to SH 288), C (US 59 S to SH 288), E (IH 10 W to US 290), F1 (US 290 to SH 249), F2 (SH 249 to IH 45 N), G (IH 45 N to US 59 N), and I-2 (IH 10 E to SH 146) are in various stages of project development. Segments H and I-1 are planned as a four-lane, limited access, toll facility within a 400-foot wide right-of-way.

SH 99 is a key element of the 2025 Regional Transportation Plan, a transportation program developed by the Houston-Galveston Area Council. The project is planned as a toll facility in the 2025 regional plan.

The EIS will include a preferred alternative alignment, number of lanes, roadway configuration, and operational characteristics of the proposed roadway. Alternatives to be studied include "no-action" (the no-build alternative), Transportation System Management (TSM)/Transportation Demand Management (TDM) alternative, mass transit alternative, and roadway build alternatives. The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement, and evacuation improvement), air and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right-of-way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Correspondence describing the proposed project and soliciting comments has been sent to appropriate federal, state, regional, and local agencies and to organizations and persons who have previously expressed an interest or are known to have an interest in this project.

TxDOT and the Grand Parkway Association will conduct two public scoping meetings in separate locations. The first public meeting/scoping meeting will be held from 6:00 p.m. to 8:00 p.m. on Tuesday, February 28, 2006 at Wilson Junior High School, 309 Highway 146, Dayton, Texas. The second meeting will be held on Wednesday, March 1, 2006 from 6:00 p.m. to 8:00 p.m. at Barbers Hill High School, 9600 Eagle Drive, Mont Belvieu, Texas.

The public scoping meetings will be conducted in an open house format with no formal presentation, and both meetings will present the same information. At least 30 days and 10 days prior to the public scoping meetings, notices will be published in newspapers having general circulation in the project area. These will be the first in a series of meetings to solicit public comments on the proposed action as part of the National Environmental Policy Act (NEPA) process.

Persons who have special communication, access, or accommodation needs should contact TxDOT's public information office at (713) 802-5072 at least two working days prior to the meeting. TxDOT offices are open Monday - Friday, from 8:00 a.m. to 5:00 p.m., excluding national holidays. The public meetings will be conducted in English. Requests for language interpreters should also be made at least two working days in advance of the meeting/hearing/workshop. TxDOT will make all reasonable efforts to accommodate these needs.

Public involvement will occur throughout the planning process. Public notice will be given stating the time and place of future public meetings

and hearings. The Draft EIS will be available for public and agency review and comment prior to a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to TxDOT at the address provided.

**Agency Contact:** Comments or questions concerning this proposed action and the EIS should be sent to Dianna F. Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 125 E. 11th Street, Austin, Texas 78701; phone (512) 416-2734.

TRD-200600405

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: January 25, 2006



### Notice of Invitation

The Texas Department of Transportation (TxDOT or the department) announces a Request for Proposal (RFP) for workforce transportation projects in border colonias. The project will be funded through the Federal Transit Administration (FTA) Job Access and Reverse Commute (JARC) Program and will be administered by the Public Transportation Division of TxDOT. The RFP is available in electronic and printed format from the department. See "To Obtain a Copy of the RFP" later in this notice.

**Purpose:** The purpose of the funding is to develop, support, or promote access to jobs and/or support services in colonias, recognized by the Office of the Attorney General in 30 counties. (See <http://maps.oag.state.tx.us/colgeog/imagemap.htm>.) Localities have wide flexibility in selecting service strategies that are appropriate to their areas.

**Eligible Applicants:** Eligible applicants include local governments, metropolitan planning organizations, workforce development boards, public transit agencies, tribal organizations, and private non-profit organizations.

**Availability of Funds:** A maximum of \$2,379,023 will be available to fund the competitively selected job access proposals requested by this RFP. The department anticipates the project period to be from September 2006 to August 31, 2008.

**Program Goal:** The department seeks proposals for services to develop, promote, or support transportation to work and work-related services for colonias residents in designated counties. Work-related services include travel to training, job interviews, and day care facilities. Proposers must demonstrate the use of a collaborative human services/transportation planning process that includes: (1) involvement with the regional planning process underway in response to Transportation Code, Chapter 461 mandates for coordinated transportation; (2) outreach efforts to colonia residents; and (3) attention to the work transportation needs of persons with disabilities.

**Eligible Expenses:** Vehicle purchases, purchase of transportation services, and operating costs are eligible for this reimbursement program. For vehicle purchases only, the Texas Transportation Commission has expressed an intention to consider formal award of transportation development credits for the local match. The local match for all expenses is 50%. Documented in-kind (non-cash) match may be used where appropriate.

**Review and Award Criteria:** The RFP follows procedures set forth by the FTA in the April 8, 2002 *Federal Register*, available on the FTA website [http://www.fta.dot.gov/legal/federal\\_register/2002/278\\_1479\\_ENG\\_HTML.htm](http://www.fta.dot.gov/legal/federal_register/2002/278_1479_ENG_HTML.htm).

Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. The proposals will be evaluated using the criteria and review process described in the RFP.

**Deadline:** Proposals prepared according to instructions in the RFP package must be received by TxDOT Public Transportation Division, 150 East Riverside Drive, Austin, Texas 78704 by 4:00 p.m. on April 20, 2006.

**To Obtain a Copy of the RFP:** A copy of the RFP is available from the Public Transportation Division on-line at <http://www.dot.state.tx.us/ptn/geninfo.htm>, under the heading "JARC Colonias Project". Interested parties should download both the Request for Proposal and the Project Application Form. Interested parties may also contact Karen Dunlap, TxDOT-PTN, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-2817 for paper copies of the Request for Proposal and the Project Application Form.

TRD-200600406

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: January 25, 2006



### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: <http://www.dot.state.tx.us>. Click on Aviation, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

TRD-200600404

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: January 25, 2006



## The University of Texas System

### Invitation for Consultants to Provide Offers of Consulting Services

Pursuant to *Texas Government Code*, Section 2254.029, The University of Texas System (the "University") is currently seeking a marketing/advertising consultant to help brand and position the University. The University seeks to enhance the public's knowledge and understanding of the breadth and scope of The University of Texas System and its 15 institutions, their impact on the state in a variety of areas including health care, economic impact, K-16 education, and research breakthroughs.

The University is looking for a Proposer to provide the assistance the University requires to conduct research interviews with key audiences

and analyze that data, conduct media planning, and draft a creative strategy that will be used to develop creative concepts.

The Chancellor has made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with the Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

The award for services will be made by the University basing its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, the University will give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The individual to be contacted with an offer to provide such consulting services or to obtain a copy of the Invitation for Offers for the consulting services identified in this invitation is:

Melissa Segrest, Director of Communications, 601 Colorado St., Austin, Texas 78701. Voice: (512) 322-3775. Email: msegrest@ut-system.edu.

The proposal submission deadline will be February 28, 2006.

TRD-200600317

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: January 20, 2006



## Texas Water Development Board

### Request for Applications for Planning and Project Grants Under the FEMA Flood Mitigation Assistance (FMA) Program

The Texas Water Development Board (Board) requests the submission of applications leading to the possible award of grants to develop Flood Mitigation Plans and implement flood mitigation projects for areas in Texas from communities with the legal authority to plan for and mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the State may submit applications for Flood Mitigation Assistance Planning and Project Grants. The available funding amounts for Federal Fiscal Year 2006 are \$179,000 for Planning Grants and \$1,930,000 for Project Grants. These grants all require a 25 percent local match, of which not more than one-half (12.5 percent) may be in the form of in-kind services. No award for a Planning Grant may exceed \$50,000, and no single community may receive more than one Planning Grant per five-year period. Project Grant limits are cumulative funding not to exceed \$3,300,000 to any single community over a five-year period.

The purpose of the FMA Program is to provide Planning and Project grants to develop or update Flood Mitigation Plans, and for implementing flood mitigation projects. The overall goal of the program is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other NFIP-insurable structures. Specific goals include reducing the number of repeti-

tively or substantially damaged structures and associated claims under the NFIP, and encouraging long-term comprehensive mitigation planning.

Planning Grants are awarded to eligible communities to develop the Flood Mitigation Plan for their planning area. Among the requirements for Project Grant applications is this FEMA approved Flood Mitigation Plan. A copy of the approved Plan must be submitted as an attachment to the applicant's Project Grant application submittal. Information contained within the NFIP Community Rating System (CRS) for the applying community or the community's Plan submitted in compliance with the Disaster Mitigation Act of 2000 (DMA 2000) may suffice as a Flood Mitigation Plan; however, approval of this as a Flood Mitigation Plan is made by FEMA. In addition, applicants must supply a map of the geographical planning area and/or the area considered for the flood mitigation project. Deadline for submitting applications for the Planning and/or Project Grant funds is 5:00 PM, March 15, 2006. FEMA requires that applicants use the Electronic Grants Management System (eGrants). Only FMA grant applications submitted through eGrants will be accepted. Applications will be evaluated according to rules provided in 31 Texas Administrative Code Chapter 368. Potential applicants for FMA Planning and/or Project Grants should contact the Board to obtain these rules (which include eligibility requirements).

Interested eligible communities should direct requests for eGrant system access to Phyllis Thomas at (512) 463-3154, or Gilbert Ward at (512) 463-6418, by e-mail to [phyllis.thomas@twdb.state.tx.us](mailto:phyllis.thomas@twdb.state.tx.us) or [gilbert.ward@twdb.state.tx.us](mailto:gilbert.ward@twdb.state.tx.us). Information is also available from the Board's web site at [www.twdb.state.tx.us](http://www.twdb.state.tx.us) under the heading, "Hot Topics."

TRD-200600330

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: January 20, 2006



### Request for Statements of Qualifications Water Research Study Priority Topics

The Texas Water Development Board (board and/or TWDB) requests the submission of Statements of Qualifications (SOQs) from interested applicants leading to the possible award of contracts for State Fiscal Year 2006 to conduct water research on two priority topics. The total amount of the grants awarded by the board shall not exceed \$500,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code (TAC), Chapter 355) are available upon request from the board, or may be found at the Secretary of State's Internet address: <http://www.sos.state.tx.us/tac/>; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 355." Guidelines for responding to the SOQ, which include an application form and detailed information on the research topic, will be available at the board's website at: [http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals\\_index.htm](http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.htm), or will be provided upon request.

#### Description of the Research Objectives and Purpose

The board's grant contribution is estimated not to exceed the posted dollar value adjacent the priority research topic. SOQs are requested for the following priority research:

*Socioeconomic analysis of major interbasin transfers in Texas (\$200,000)*

Prior to the passage of Senate Bill 1, 75th Texas Legislature, over 99 interbasin water transfers had been permitted in Texas. Before 1997, an

interested party could purchase an existing water right from outside of their river basin and the right would retain its legal status with respect to prior appropriation. However, Senate Bill 1 imposed new restrictions on interbasin transfers. Under the new law, certain existing water rights transferred outside of their basin of origin automatically became the most junior water right. In other words, in times of shortages, these junior water rights would be the first to be reduced or temporarily suspended.

Thus, Senate Bill 1 diminished the perceived value of interbasin transfers to potential buyers seeking a dependable source of water, including during times of drought. This may be evident by the fact that local and regional interests throughout the state identified and evaluated a range of interbasin transfers as potential water strategies in the 2001 Regional Water Plans, and few were recommended as preferred strategies. Under Texas law, those that were recommended would be subject to the junior water rights provision. In some regions, the diminished value of interbasin transfers has contributed to an over-reliance on alternative strategies, including pumping water from increasingly limited ground-water resources.

Interbasin transfers may be an effective way to meet some of Texas' future water supply needs; and as a result, they require closer scrutiny in the context of state water planning and permitting. Specifically, analysis is needed to evaluate the socioeconomic aspects of major interbasin transfers recommended as water management strategies in the 2002 State Water Plan, and in the 2001 and 2006 Regional Water Plans. The goal of the proposed research is to:

- (1) summarize and discuss major interbasin transfers identified in the 2002 State Water Plan and in the 2001 and 2006 Regional Water Plans, and compare the life-cycle costs of these transfers to alternative strategies;
- (2) estimate and compare the economic value of transferred water as it relates to the level of economic and social activity that the water supports in its pre-transfer and its post-transfer use(s); and
- (3) analyze how the economic value of transferred water changes under two scenarios: a) the status quo assuming that transferred water becomes junior in status; and b) an alternative scenario assuming that transferred water retains in original legal status.

#### *Reservoir site acquisition (\$300,000)*

Approximately 100 potential reservoir projects have been identified or recommended in the past 40 years of state water planning. Some of these sites are no longer viable due to development, but many are still under consideration, and have been identified as being needed to meet future water supply needs. Analysis of all reservoir sites that have been considered by the state for water supply purposes, using digital topographic data, modern GIS techniques and the Texas Commission on Environmental Quality Water Availability Models offers the possibility of narrowing down the list of a hundred or so down to the few that remain potentially feasible. Determining the extent and exact location of the reservoir footprint would enable land acquisition costs to be estimated. Furthermore, study of the recently released 2004 aerial photographs (DOQs) held by TNRIS would allow users to estimate the extent of wetlands and bottomland hardwoods for these potentially feasible sites, which in turn would help determine likely mitigation needs for reservoir construction.

The approach will involve the following steps:

- (1) Develop a list of all potential reservoir sites considered by the state for water supply purposes in the last 40 years.

- (2) Develop a matrix/filter and apply to the list of sites generated in Step 1, to determine those sites that are still potentially feasible. Collaboration will take place with TWDB to determine cutoff for sites needing further study.

- (3) Using the Water Availability Models (WAMs), evaluate yield of sites remaining after Step 2; and determine land acquisition costs, mitigation costs and approximate cost of reservoir construction.

- (4) In collaboration with TWDB, prioritize remaining reservoir sites for the state.

The goal of this research is to facilitate assessment of the viability of a state program to acquire and protect land for future development of surface water supplies.

#### **Description of Applicant Criteria**

The applicant should:

- (1) demonstrate prior experience in the priority research topic;
- (2) be able to review, research, analyze, evaluate, and interpret data and research findings; and
- (3) have excellent oral presentation and writing abilities.

If the applicant is short-listed, the applicant should be prepared to make an oral presentation to board staff. The scope of work, schedule, and contract amount will be negotiated after the board selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next most-qualified applicant; however, a negotiation will not occur with applicants who are determined by the board to be unqualified or otherwise unsuited to perform the requested research. Applicants selected to conduct the research may be required to present the results of their research at one or more of the board's monthly public meetings.

#### **Deadline for Submittal, Review Criteria and Contact Person for Additional Information**

Historically Underutilized Businesses are encouraged to submit statements of qualifications and/or participate as sub-contractors in the water research program. Ten double-sided, double-spaced copies of a completed Statement of Qualifications must be filed with the board prior to 5:00 PM, March 16, 2006. Respondents to this request shall limit their Statement of Qualifications to the size previously mentioned, excluding the resumes of the project team members. Statements of Qualifications can be directed either in person to Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 537, 1700 North Congress Avenue, Austin, Texas; or by mail to Phyllis Thomas, Texas Water Development Board, P.O. Box 13231--Capitol Station, Austin, Texas 78711-3231. All applicants must contact the board to obtain the board's guidelines for responding to the SOQ. Requests for information and the board's guidelines for responding to the SOQ should be directed to Phyllis Thomas at the preceding address, by calling (512) 463-3154, or by e-mail to: {phyllis.thomas@twdb.state.tx.us}.

TRD-200600331

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: January 20, 2006



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).